

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA) No. EP-12-CR-2106-DB
)
vs.) El Paso, Texas
)
MARCO ANTONIO DELGADO) October 23, 2013

VOLUME 3 OF 6 VOLUMES
JURY TRIAL
BEFORE THE HONORABLE DAVID BRIONES
UNITED STATES DISTRICT JUDGE, and a jury.

A p p e a r a n c e s:

FOR THE GOVERNMENT: MS. DEBRA P. KANOF &
 MS. ANNA E. ARREOLA
 Assistant United States Attorneys
 700 E. San Antonio, Suite 200
 El Paso, Texas 79901

FOR DEFENDANT: MR. RAY VELARDE
 Attorney at Law
 1216 Montana Avenue
 El Paso, Texas 79902

 MR. RICHARD ESPER
 Attorney at Law
 801 N. El Paso Street, 2nd Floor
 El Paso, Texas 79902

Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Open court; jury present.)

2 THE COURT: Good morning, ladies and gentlemen.

3 Members of the jury, I need to remind you again to
4 abide by all the instructions that I gave you, please.

5 Are you ready to proceed?

6 MS. KANOF: Yes, Your Honor. The Government calls
7 Special Agent Alex Ascencio.

8 (Witnesses duly sworn.)

9 THE WITNESS: I do.

10 MS. KANOF: May I proceed, Your Honor?

11 THE COURT: You may proceed.

12 MANUEL ALEJANDRO ASCENCIO, GOVERNMENT'S WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MS. KANOF:

15 Q. What's your name?

16 A. My name is Manuel Alejandro Ascencio, but I go by Alex.

17 Q. By Alex. How are you employed?

18 A. I'm employed with Homeland Security.

19 Q. How long have you been employed with Homeland Security?

20 A. Since July of 2006.

21 Q. And what is your position currently with Homeland Security?

22 A. I'm a special agent.

23 Q. And I know -- without saying where -- are you presently
24 assigned to a foreign country?

25 A. Yes, ma'am.

1 Q. And does Homeland Security have agents in many foreign
2 countries?

3 A. 47 different offices.

4 Q. Are you assigned to a Spanish-speaking country?

5 A. Yes.

6 Q. Where were you born?

7 A. I was born in Mexico.

8 Q. And when did you come to the United States?

9 A. When I was four years old.

10 Q. Was Spanish your first language?

11 A. Yes, ma'am.

12 Q. Where did you grow up?

13 A. I grew up in Los Angeles, California.

14 Q. Okay. And when you started, you began work in law
15 enforcement before you went to Homeland Security, correct?

16 A. Yes, ma'am.

17 Q. Where did you begin that career?

18 A. Actually, I began as a police officer with Statesville,
19 North Carolina.

20 Q. Where is Statesville, North Carolina?

21 A. Statesville, North Carolina, is a small city directly north
22 of Charlotte going up 77, where 77 and 40 meet.

23 Q. Okay. And what did you -- about when did you start working
24 as an officer for the Statesville police?

25 A. I started in 2000.

1 Q. What were your duties and responsibilities with the
2 Statesville Police Department?

3 A. For the initial first year I was a patrol officer. After
4 the initial first year I was basically, on my anniversary date,
5 transferred to narcotics.

6 Q. And for lack of a better word, did you enjoy a somewhat
7 meteoric career because you were the only one, perhaps in
8 Statesville, that spoke Spanish?

9 A. Absolutely. Actually, I was the first Hispanic ever hired
10 by Statesville, the city, on anything. I'm actually in the
11 history books as the first Hispanic.

12 Q. Okay. And are there individuals that are arrested in
13 Statesville and neighboring communities in North Carolina that
14 are only Spanish speakers?

15 A. Yes, ma'am.

16 Q. So as soon as your year was up, what did they assign you to
17 do?

18 A. To narcotics.

19 Q. And how long were you handling narcotics?

20 A. I actually handled narcotic investigations, money
21 laundering investigations, until I left the Statesville Police
22 Department.

23 But for the actual Statesville Police Department, I
24 did it for about six months, and then I was actually assigned
25 full-time to Customs, back when U.S. Customs actually started

1 working transnational criminal organizations based on money
2 laundering and drug trafficking.

3 Q. So that would be before 2002, when Customs became part of
4 Homeland Security, correct?

5 A. Yes, ma'am.

6 Q. Okay. And you were task forced with the legacy agency of
7 Homeland Security, correct?

8 A. Correct.

9 Q. What were you doing on a task force as a local police
10 officer?

11 A. One of my main functions for the task force was being an
12 undercover for them.

13 Q. Okay. And did you have any particular undercover training?

14 A. No, not at that point. Everything was basically
15 self-taught from the Statesville Police Department.

16 Q. Okay. But did they use you frequently as an undercover
17 because of your fluency in Spanish?

18 A. Correct.

19 Q. In addition to having been initially raised in the Spanish
20 language, were you also very familiar and are you still very
21 familiar with Spanish slang?

22 A. Yes, ma'am.

23 Q. And how about with drug dealer lingo?

24 A. Yes, ma'am.

25 Q. So how long were you working on the task force with Customs

1 as an undercover?

2 A. I was working with a task force for almost four years
3 before I got hired on and moved over to the federal side.

4 Q. So the federal government stole you?

5 A. Yes. Basically.

6 Q. Okay. And where were you -- I'm assuming Homeland
7 Security?

8 A. Yes, ma'am.

9 Q. Where were you first assigned?

10 A. I was first assigned, once I finished FLETC, to Atlanta,
11 Georgia.

12 Q. Okay. FLETC. I'm going to ask you, please, not to use law
13 enforcement language, but that's the Federal Law Enforcement
14 Training Center, correct?

15 A. Correct.

16 Q. Okay. So in order to become a federal agent you had to go
17 to school?

18 A. Correct.

19 Q. Did you go to undercover school?

20 A. Yes, ma'am.

21 Q. When did you go to undercover school?

22 A. I went to undercover school three months after I graduated
23 the law enforcement training center.

24 Q. What, if anything, about that is unusual?

25 A. Because usually they required that agents have a three

1 year, you know, time under their belt to be able to prove that
2 they're mature enough and know what they're doing undercover.
3 But because of my history with the task force, already working
4 for the agency, I was able to get a waiver and go to undercover
5 school.

6 Q. Okay. And what kind of things do you learn about handling
7 informants in undercover school?

8 A. Basically you learn how to talk to them, how to manipulate
9 them, if can be. You know, it's always keep your distance
10 from -- basically they're not your friends. They're there to
11 help you accomplish a goal. And at that point, mainly as an
12 undercover, you want to keep that distance between yourself and
13 somebody cooperating.

14 Q. In your experience, have you found that some of the people
15 undercover -- or informants. Let's call them informants for
16 right now -- lie?

17 A. Yes.

18 Q. To you?

19 A. Yes.

20 Q. And how -- what do you do to distinguish whether or not you
21 feel they're telling you the truth or not?

22 A. Well, at that point if we have a viable issue where we
23 believe there's a lack of honesty, then we start -- basically,
24 we put a filter of what's going on between us and whatever
25 investigation we're working and them, because we know they're

1 playing both sides, for lack of better words.

2 If we can use them to continue to get -- extract
3 information, we do so. But we definitely know to keep our
4 distance at that point.

5 Q. Where were you assigned after you came out of undercover
6 school?

7 A. I was assigned to the financial group.

8 Q. What does the financial group do?

9 A. The financial group actually investigates every type,
10 array, of money laundering scheme that is under our spectrum
11 for our agency. But primarily, we investigate money laundering
12 and drug trafficking.

13 Q. And through -- through the -- your experience both as a
14 narcotics police officer all the way to your experience in a
15 foreign country, have you become very familiar with drug
16 trafficking and money laundering?

17 A. Absolutely. With my case, I'm very familiar because I'm
18 actually in the middle of it most of the time, or I used to be,
19 before I went to a foreign country.

20 So I have firsthand knowledge directly from, you know,
21 the suspects, the bad guys, the guys that are actually pulling
22 the strings, whether it was in Mexico, Colombia, Venezuela,
23 learning the tactics, their ways of thinking, their mannerism.

24 So, yes, ma'am.

25 Q. Where were you assigned -- what city were you assigned to

1 when you first became an agent?

2 A. I was assigned to Atlanta, Georgia.

3 Q. Were you assigned to Atlanta, Georgia, from 2006 through
4 2008?

5 A. Actually, I was assigned to Atlanta once I finished the law
6 enforcement center, which was in January of 2007, until I left.
7 And just in February of last -- of this year.

8 Q. What were your duties and responsibilities with the Atlanta
9 office?

10 A. Primarily was with the financial group investigating
11 transnational organizations based on money laundering, drug
12 trafficking. Of course I was the main undercover for our
13 operation based out of Atlanta.

14 Q. Okay. So you were the main undercover agent in Atlanta; is
15 that correct?

16 A. Yes, ma'am.

17 Q. By the way, we talked about you going to undercover school.
18 About how many people are allowed in each class?

19 A. 24.

20 Q. And about how many graduate and are certified undercover?

21 A. I would say about 80 percent are actually certified to do
22 undercover. And I would say out of 24, maybe one actually goes
23 out and does undercover.

24 Q. So a lot of people go to that school that don't actually
25 use that education?

1 A. Correct.

2 Q. But you're not one of them?

3 A. No, ma'am.

4 Q. When you were in Atlanta, did you just -- you continued
5 your undercover work?

6 A. Yes, ma'am.

7 Q. Now, when a case comes in -- and I'm talking about your
8 Atlanta experience.

9 When a case comes in, is the undercover ever the case
10 agent?

11 A. Yes.

12 Q. Okay. Were you the case agent for a seizure that occurred
13 in Atlanta in September of 2007?

14 A. No, ma'am.

15 Q. Okay. You had just -- you hadn't been in Atlanta very
16 long, correct?

17 A. Correct.

18 Q. Were you asked, however, to participate by the case agent
19 as an undercover in that particular seizure?

20 A. Yes, ma'am.

21 Q. Okay. Do you recall when you first heard about a
22 million-dollar seizure by the Carroll County Sheriff's Office
23 outside -- immediately outside of Atlanta on I-20?

24 A. Yes, ma'am.

25 Q. Who contacted you?

1 A. Actually, I was contacted by my group supervisor, Bryan
2 Ramsey. I was on my way home. It was late that evening, and
3 he said for me to try to get up to Carroll County as soon as
4 possible.

5 Q. Okay. So you actually went to the Carroll County Sheriff's
6 Office?

7 A. Yes, ma'am.

8 Q. On the night of September 4th of 2007?

9 A. Yes, ma'am.

10 Q. Who else went?

11 A. When I got there, Special Agent Tom Justice was already
12 there -- already at the scene. One of our task force officers,
13 kind of like what I did for the Atlanta PD, was there, Ed
14 Christian. And I believe we had several of the sheriff's
15 office officers on location also.

16 Q. Okay. And so basically, the whole financial group showed
17 up?

18 A. Yes. Yes.

19 Q. Is that common?

20 A. Yes, ma'am. We're a very tiny group. And once something
21 happened, everybody would go there.

22 Q. Was a million dollars a large amount of money for that
23 corridor?

24 A. Yes, ma'am.

25 Q. Okay. And have you seen more?

1 A. Yes.

2 Q. Have you seen less?

3 A. Yes.

4 Q. And I'm talking about cash.

5 A. Yes.

6 Q. In your education and in your experience to -- it can be
7 dangerous being an undercover, correct?

8 A. Absolutely.

9 Q. And what is the purpose of introducing an agent as an
10 undercover into an operation?

11 A. Basically, introducing an undercover to any type of
12 operation plays a huge facet in the investigation, because it
13 leads into a realm that you would normally not see as law
14 enforcement.

15 You basically take on a persona of a bad guy, a
16 suspect, and you're able to win their rapport, their affection,
17 their friendship to a point, and be able to extract information
18 that would be vital for the investigation down the road.

19 Without that type of tool, because it really is a
20 tool, we would miss out on a lot of information that we would
21 use for successful prosecutions.

22 Q. Do you determine whether or not the informant is a trusted
23 member of the organization and might successfully be able to
24 introduce you into that organization?

25 A. Absolutely. We take all that into account, because the

1 last thing we want to do is introduce anybody into an
2 organization that would be in danger. You know if the person
3 cooperated, the CI, is unable to do a proper
4 introduction, we wouldn't even consider that option.

5 Q. Okay. And for example, you're familiar with the case in
6 trial right now. You-all did not use Victor Pimentel to
7 introduce you into the organization, correct?

8 A. No, ma'am.

9 Q. Who did you use?

10 A. We used Marco Delgado (pointing).

11 Q. Okay. And when you said you used Marco Delgado, you
12 pointed at somebody. Who were you pointing at?

13 A. Pointing to the gentleman over there with the green striped
14 tie (indicating).

15 MS. KANOF: May the record reflect he was indicating
16 the Defendant, Your Honor?

17 THE COURT: The record will so reflect.

18 BY MS. KANOF:

19 Q. And also, in order to successfully be introduced, do you
20 have to speak drug lingo?

21 A. Yes.

22 Q. You have to know, in this particular instance, how money is
23 laundered?

24 A. A million dollars is what they were trying to launder.

25 Q. I know. But you need to have an education and you need to

1 act like you know how to launder money, correct?

2 A. Absolutely. Absolutely.

3 Q. Okay.

4 A. You have to be able to talk the lingo, talk the talk and
5 ultimately walk the walk.

6 Q. Let me ask you. What is a Title III?

7 A. A Title III is basically a wiretap intercept of a -- in a
8 spoken communication or some type of communication.

9 Q. And of course it takes a very long time to get
10 authorization from the Department of Justice to do a wiretap,
11 correct?

12 A. Absolutely. You have to present it before the AUSA. It
13 goes up to OEO up in Washington. It could take...

14 Q. What, if any, role did you have in the Atlanta SAC office
15 with regard to writing affidavits to the Department of Justice
16 and to the Court in order to get them to allow an interception
17 of a telephone?

18 A. Actually, for Atlanta, I was one of the main agents that
19 dealt with Title IIIs or wiretaps in Atlanta. I was what they
20 considered the designated technical agent.

21 So I would do everything from setting up the servers,
22 the equipment, to writing for funding, writing the affidavits
23 to go to court. So I was one of the main guys that dealt with
24 wiretap for my office in Atlanta.

25 Q. And of course, do you -- are you ever a monitor?

1 A. Yes. We have our own contract with the monitors that
2 actually sit down and do day-by-day. But of course, I would
3 sit --

4 Q. They sit in a windowless room and listen to conversations
5 all day?

6 A. Basically. Basically. But we -- we always try to go in,
7 mainly with a Spanish speaker, just listening to the phone
8 calls. But sometimes you miss little tidbits that you're used
9 to talking to face-to-face with these people.

10 Q. Were you the only Spanish-speaking member of the financial
11 group in Atlanta?

12 A. No. I was the only Hispanic. We did have a couple of
13 agents that spoke Spanish, but not clearly.

14 Q. That were from a different company -- different country
15 like Cuba or Puerto Rico?

16 A. No, ma'am.

17 Q. No. I mean the other Spanish speaking agents, they were
18 not Hispanics?

19 A. They were not Hispanic.

20 Q. Okay. And while I'm on that subject matter, do you have to
21 be careful that the undercover has the accent and speaks the
22 language of a certain Spanish-speaking country?

23 A. Absolutely. Absolutely. In the different investigations
24 that we've worked, actually several investigations now, not
25 only in the United States, but in Colombia, Hispanics --

1 Mexicans are fine. They are actually seen as an ally.

2 If they hear Puerto Ricans or something to that
3 extent, actually, that's a red flag to them. And we've heard
4 them several times, and they've told me directly if they don't
5 sound Mexican, they don't sound Colombian, walk away.

6 Q. So it's important to know the nationality of the
7 individuals you're investigating?

8 A. Correct.

9 Q. Okay. And so -- because it would be dangerous if you
10 were -- infiltrated, say, a Dominican drug trafficking
11 organization, because they would immediately know you were not
12 Dominican?

13 A. Correct.

14 Q. And while we're on the subject, are Spanish-speaking
15 countries the only countries that traffic in drugs, illegal
16 drugs?

17 A. Absolutely not.

18 Q. What other countries have you investigated drug trafficking
19 organizations from?

20 A. We've investigated Great Britain, Vietnamese, Canada, you
21 know, Vietnam, China, Iraq.

22 Q. And of course you can't be an undercover in any of those
23 countries?

24 A. Not directly. No.

25 Q. All right. Now, with regard to the money laundering

1 operations.

2 Do you ever -- when you're listening to conversations,
3 whether they be wired, body wired, or Title III, do you ever
4 hear them say, Oh, we need to go pick up our marijuana money?

5 A. Absolutely not. You know, they always speak in code. The
6 last thing they want to do is, you know, explain what they're
7 doing, because they believe everybody listens to them anyway.

8 They don't want to explain verbatim what they're
9 doing. Everything is going to be code to whether it's the
10 drugs, the money, the movement of that same thing or guns,
11 people.

12 Q. Okay. And so you sometimes don't know the type of drug; is
13 that correct?

14 A. That's correct.

15 Q. But from the code, you can discern that they're talking
16 about drugs, in your experience?

17 A. Yes, ma'am.

18 Q. And you sometimes don't know the amount of money. But from
19 the code, you can ascertain they are talking about money?

20 A. Correct.

21 Q. Okay. What is a mirror operation?

22 A. A mirror operation is basically a scheme where there's a
23 transfer of money from one point to another between a group of
24 people that don't know each other. The actual people handling
25 the money -- technically, you'll have -- in fact, to give a

1 quick example.

2 You have somebody in Colombia, he has somebody that's
3 known in the States, but they're just the middleman. The
4 people that are actually handling the money don't know each
5 other in Colombia and in the States, so they need this group to
6 be able to move the money quickly.

7 So it's basically -- a mirror operation in Spanish is
8 what we call a *contraentrega*. Somebody delivers money in the
9 States and immediately, within minutes, pays it out in Colombia
10 or Mexico, Venezuela, wherever the --

11 Q. Well, if they have the money in Colombia -- how do they
12 already have money in Colombia to basically reimburse the
13 people in the other country that is paying the money?

14 A. Basically these money laundering cells, they will have
15 stores. For example in Colombia there's a huge store in Cali,
16 Colombia, called *Del Monte*.

17 Basically, all the money launderers that we have
18 investigated have always had some type of office near, and they
19 keep large, large amounts of money in hand for this specific
20 reason, because they are able to do *contraentregas* in the
21 States, in Europe or wherever, and pay out right then and
22 there.

23 MS. KANOF: Is he speaking too fast for you, Suky?

24 THE COURT REPORTER: I needed the Spanish word.

25 THE WITNESS: *Contraentrega*.

1 BY MS. KANOF:

2 Q. All right. And in mirror operations, do they use banks?

3 A. No.

4 Q. Do drug dealers sometimes use banks to money launder?

5 A. Yes.

6 Q. About -- what kind of amounts of monies would be -- would
7 you see being deposited in a bank?

8 A. No. For deposits, we've always seen small, small amounts.

9 Many years ago they would actually smurf, or just
10 break down money, to keep it under the \$10,000 mark. That way
11 it wouldn't initiate any type of reporting requirements.

12 But the last few years we've seen what we consider
13 microsmurfing, where they're putting in a thousand, 1300. I
14 mean, they're getting pretty smart at it. They're trying to
15 step -- stay ahead -- stay a step ahead of us. Excuse me.

16 Q. Okay. So you said something about \$10,000?

17 A. Yes, ma'am.

18 Q. Are there reporting requirements? I think you mentioned
19 something about a reporting requirement?

20 A. Yeah. Correct. Any time you deposit or do some type of
21 transaction, monetary transaction with the bank, they have to
22 file what's called a CTR.

23 Q. In what amount? In what amount of money?

24 A. Anything over \$10,000.

25 Q. Okay. And what do they have to do?

1 A. They have to file a report called a Cash Transaction
2 Report, a CTR, or Currency Transaction Report.

3 Q. And that's basically for the Internal Revenue Service?

4 A. Yes, ma'am.

5 Q. And how about in a store? If somebody spends more than
6 \$10,000 cash in a store, does the IRS have another form that
7 they have to report?

8 A. Yes. And if you go buy a car at a store -- or anywhere,
9 you spend anything over \$10,000. And even some money service
10 business they have to file a Form 8300 that reports you using
11 cash to do some type of financial transaction.

12 Q. And the United States has a border with Canada and a border
13 with Mexico. Does anything happen at the border if you have
14 \$10,000 in cash or more?

15 A. Yes, ma'am. Any time you travel, when you're coming back
16 into the States or leaving the States, you have to report if
17 you're leaving or coming in with over \$10,000. And you file
18 what's called a CMIR, which is just a Currency Monetary
19 Instrument Report.

20 Q. Okay. So what is structuring?

21 A. Structuring is whenever you take -- you have this knowledge
22 that you cannot put in more than \$10,000 in the bank. You have
23 \$30,000. So what you do is you structure. You break it down
24 to 5,000, you know, 6,000, 8,000 under the \$10,000 mark. And
25 you just go from bank and bank, and you just deposit the money

1 in the same account or different accounts, you know, hoping
2 that you're going to keep the tellers from recognizing that
3 you're putting in more than \$10,000, you know, in a time
4 period.

5 Q. Do banks have, in this day and age, computer software to
6 detect structuring?

7 A. Absolutely.

8 Q. What is that called?

9 A. The actual software, I don't --

10 Q. Not necessarily the software. But...

11 A. The reporting.

12 Q. Okay.

13 A. The reporting that they have is called a suspicious
14 activity report. And it could be initiated either by the
15 actual bank, by the teller themselves, or it could be
16 automatically initiated by the software that the bank uses.
17 Once it triggers a certain amount of, you know, transactions,
18 maybe, and cash.

19 Q. So the actual human employees are trained to look out for
20 structuring, correct?

21 A. Absolutely.

22 Q. And there's a software system that automatically generates
23 a report if they detect a pattern --

24 A. Correct.

25 Q. -- of cash deposits, correct?

1 A. Correct.

2 Q. And is it -- the bank obligated by law to provide the SAR
3 reports to federal law enforcement?

4 A. Yes.

5 Q. And a financial group like yours, or in any Homeland
6 Security investigations office, do you sometimes start
7 investigations based on a bank's SAR?

8 A. Absolutely. We actually have what's called a SAR committee
9 that encompasses several agencies, federal and local agencies,
10 that will sit down and review the SAR reports to help initiate
11 investigations.

12 Q. You were using Colombia as an example. Do drug dealers use
13 friendly countries to launder their money?

14 A. Absolutely.

15 Q. What's a friendly country?

16 A. A friendly country is a country that does not have our
17 strict Bank Secrecy Act or something similar. Something where
18 they could easily manipulate the infrastructure, the banking
19 infrastructure, to be able to introduce, you know, their money
20 from illicit funds.

21 Q. Do you -- is the Turks and Caicos a friendly country?

22 A. My understanding, it's -- to them it can be. And really,
23 it all depends where their contacts are.

24 I mean there's Turks and Caicos, Colombia, Venezuela.
25 Wherever these organizations have their contacts, that's where

1 they're going to usually move the money to.

2 Q. So a lot of times when a large sum of money is being
3 laundered, does there have to be a friendly person to assist
4 them in that foreign country?

5 A. Absolutely. There's many facets to the actual money
6 laundering schemes, because there's several. And you always
7 need that human element somewhere, somebody of confidence that
8 you could actually -- because you're confiding somebody with,
9 basically, your livelihood.

10 At the end of day, these money laundering
11 organizations and drug trafficking organizations do it for the
12 money. So they're going to have somebody on the other side
13 that they trust with their money.

14 Q. Do drug -- the people that actually handle the dope handle
15 the money laundering?

16 A. Yes.

17 Q. Okay. And sometimes do they create fake corporations or
18 limited partnerships or LLCs to assist them in money
19 laundering?

20 A. Absolutely. We've seen that scheme many, many times in
21 Atlanta where they create just virtual companies. Basically
22 they register a company online, and they're able to use it to
23 just facilitate the movement of money to make false, you know,
24 statements, invoices, whatever is necessary for the
25 organization to achieve their goal.

1 Q. Okay. And another method has arisen in this case, casinos?

2 A. Yes, ma'am.

3 Q. Are casinos used to launder money?

4 A. Absolutely.

5 Q. How does a casino assist? And does the actual casino owner
6 have to be corrupt?

7 A. No, no. Absolutely not. Casino money laundering is a --
8 is an aspect where you take a large amount of money and you
9 take it into a casino, usually break it up between a group of
10 people that are going, and they go in and gamble for a few
11 minutes on the slot machines, put in, you know, \$1,000, \$2,000
12 in it, spend 20 of that, and cash out. Then you grab your
13 ticket ultimately.

14 And usually it's done in border towns. We've seen it
15 mainly in the northern border towards Canada. They cash out
16 the ticket and --

17 Q. Are you aware that there are casinos in the state of
18 New Mexico?

19 A. No, ma'am.

20 Q. Okay. Well, let's assume for a minute that there are
21 casinos in the state of New Mexico.

22 And for people who don't go to Sunland Park or take
23 their weekend vacation to Las Vegas, could you tell the jury
24 how a slot machine works nowadays? Money doesn't come pouring
25 out of it, right?

1 A. No. No. I mean some do, but most of the time you're able
2 to push the button and get a ticket out that gives you the
3 amount that you've actually won or had in the machine. So
4 that's not necessarily that you won the money. Whatever you
5 put in, you print that out. If it's \$1,000, you spent 20, so
6 you got \$980.

7 You walk up to the teller and they are able to give
8 you cash. At that point you're starting to create a filter.
9 You're trying to -- you're starting to create a money trail
10 where you could articulate, Hey, I got this from the casino.

11 Q. Okay. So say you put a \$100 bill in a slot machine and you
12 bet one dollar.

13 A. Uh-huh.

14 Q. And then you push cash out on the machine. You get a
15 ticket that will have \$99 on it?

16 A. Yes.

17 Q. Assuming you didn't win.

18 A. Yes, correct.

19 Q. Which is most of the time.

20 A. Exactly. Exactly.

21 Q. Okay. And so then they have the \$99 and they spent only
22 one dollar to launder that money?

23 A. Correct.

24 Q. Is that -- that would be what, less than -- that's one
25 percent, right?

1 A. Absolutely.

2 Q. So it's a cheap way of laundering money, correct?

3 A. Actually, very cheap. The cases we've had, we've actually
4 seen them tell them, whatever winnings you make, you keep. So
5 they give them an allotted amount that they can spend.

6 Anything after that, you know, they have to stop and cash out.

7 But if they win, they keep it as part of their -- basically
8 part of the pay.

9 Q. So physical money laundering, where you have to have people
10 that you trust move the money, how do the people that move the
11 money get paid?

12 A. The people that actually move the money, they get paid from
13 the cash as it's being moved.

14 A lot of times *contraentregas*, which is a vital part
15 of money laundering, because it places the money where the
16 organization needs to get into some type of scheme.

17 They extract money from that to pay for everything:
18 Transportation, food, housing, medical expenses. We've seen
19 that. Paying off people to, you know, stay quiet. Anything
20 you could imagine they'll break off from the money being moved.

21 Q. Do they sometimes contract for a percentage of the money
22 they're laundering?

23 A. Yes, ma'am.

24 Q. Okay. Now you said that on September 4th of 2007, you went
25 to the Carroll County Sheriff's Office. And when you arrived,

1 did they have an individual sitting in a room that had had a
2 million dollars in cash?

3 A. Yes, ma'am.

4 Q. And what was your responsibility, and what action -- what
5 did you participate in while you were at the Carroll County
6 Sheriff's Office?

7 A. You know, basically, once I showed up, I -- I walked in and
8 I noticed that they had the kid just -- or excuse me, Victor
9 Pimentel -- just to the side, and they were talking --

10 Q. You called him what, the kid?

11 A. The kid, yes.

12 Q. Is that, basically, a nickname that you-all developed for
13 him?

14 A. Yes.

15 Q. Why?

16 A. Because he -- he was very, very young, naive. My
17 understanding is whenever they stopped him and they asked him
18 if he had anything illegal in the car he said, No, no, no.

19 And when they said, Do you have any large of amounts
20 of money?

21 Yeah, I got a million dollars in the backseat.

22 Q. Have you ever seen that before?

23 A. Never. Never in my whole career.

24 Q. And what -- so Victor Pimentel was there.

25 And what did you do?

1 A. Basically, I just stood by on the outskirts because they
2 were already talking to him. So I just kind of waited there
3 while they talked to him and figured out what was going to be
4 the next step.

5 Q. Did Victor Pimentel speak English?

6 A. Yes.

7 Q. Okay. Was he speaking -- was he talking to the agents in
8 English?

9 A. Absolutely.

10 Q. Okay. So he didn't pretend like he didn't speak English?

11 A. No.

12 Q. Okay. And after the agents -- who was interviewing him?

13 A. At that point, if I recall correctly, it was Tom Justice.

14 I believe Jansen Brandon was already there. Chad Elliott, with
15 the -- a deputy with the Carroll County Sheriff's Office. And
16 they had one other investigator, which I cannot recall his
17 name.

18 Q. With regard to Mr. Pimentel and you, what was your next
19 action?

20 A. Basically, the next action that we decided as a group was
21 to reach out to El Paso, because the money was actually
22 ultimately destined for El Paso.

23 Q. Okay.

24 A. We reached out to that office, where we agreed to do what
25 we consider a controlled delivery, where we were going to

1 actually take control of the money and physically bring it to
2 El Paso.

3 Q. A bunch of the financial group traveled to El Paso with the
4 money, correct?

5 A. Correct.

6 Q. Did you?

7 A. No. No, no.

8 Q. Why didn't you go to El Paso with everyone else?

9 A. Because at that point we had Mr. Pimentel already
10 cooperating. And we were hoping to be able to continue with
11 the investigation and ultimately try to, you know, see if they
12 could introduce me as an undercover to the organization
13 furthering the investigation.

14 Q. So evidently it was never a consideration for Victor
15 Pimentel to introduce you?

16 A. No, no.

17 Q. Why?

18 A. We -- with him cooperating at that point, we didn't even
19 talk to him about trying to do anything further when it came to
20 an undercover operation. We just kind of, for lack of better
21 words, we left him in the dark.

22 Q. Okay. And at some point in time did you come to El Paso?

23 A. I did not come to El Paso.

24 Q. Did an individual by the -- that you've identified as Marco
25 Delgado go to Atlanta?

1 A. Yes.

2 Q. Okay. In order for you to be introduced as an undercover
3 compatriot of an individual, do you have to be thoroughly
4 familiar with what has happened up until that point?

5 A. Correct.

6 Q. And you had, by that time, familiarized yourself; is that
7 correct?

8 A. Yes, ma'am.

9 Q. So when did Mr. Delgado come to Atlanta?

10 A. Mr. Delgado came to Atlanta after he had been encountered
11 by agents after he took possession of the million dollars here
12 in El Paso.

13 Q. On the controlled delivery?

14 A. Yes, ma'am.

15 Q. Okay. And were you aware there was a second controlled
16 delivery?

17 A. Yes, ma'am.

18 Q. Were you aware that at this point all four people that had
19 been encountered by federal law enforcement were let go?

20 A. Yes.

21 Q. Why?

22 A. Basically, they let them go to be able to try to further
23 the investigation.

24 Q. What was the ultimate end of the investigation?

25 A. The ultimate end of the Atlanta investigation? It went

1 nowhere.

2 Q. No. But I mean, what did you all hope you were going to
3 find?

4 A. Well, our hope was to actually get into the organization,
5 you know, introduce me as an undercover and start winning,
6 basically, what I was talking about earlier, doing money
7 pickups through the group to further identify the organization,
8 identify routes, banking accounts, other co-conspirators.

9 Q. Okay. And when -- do you remember independently when
10 Mr. Delgado came to Atlanta?

11 A. It was just a few days after he was actually encountered in
12 El Paso.

13 Q. Did you meet with him?

14 A. Yes.

15 Q. Did you debrief him?

16 A. I was present while he was being debriefed, yes.

17 Q. Okay. And what language was he speaking in?

18 A. English.

19 Q. Okay. So let me draw your attention to September 14th of
20 2007.

21 You were -- after they debriefed him, did they
22 introduce you to him?

23 A. Yes.

24 Q. I was ahead of myself.

25 And on September 14th of 2007, did Mr. Delgado attempt

1 to introduce you to an individual in the organization?

2 A. Yes, ma'am.

3 Q. Who was that?

4 A. If I recall, Paco was the first one.

5 Q. Okay. And did you know what Paco's real name was at that
6 time?

7 A. At that time, no.

8 Q. What plan did you devise and instruct Mr. Delgado to do as
9 a cooperating individual?

10 A. At that point we wanted to throw some of the blame on the
11 two guys that were released at the end, that were encountered
12 here in El Paso.

13 Q. Okay. You're aware of the second controlled delivery,
14 correct?

15 A. Correct. Correct.

16 Q. And a guy named -- do you remember the names of the second
17 controlled delivery guys. Isidro? Does that ring a bell?

18 A. Yes. Isidro, and I don't recall the second one.

19 Q. Okay. And you were wanting to put the blame on them. Why?

20 A. Basically, you know -- well, we wanted to create a filter
21 between the organization and Mr. Delgado to keep -- you know,
22 to save face.

23 Hey, it wasn't his fault, so we could try to once
24 again introduce us into the organization and further the
25 investigation.

1 Q. Okay. What do you do to determine whether or not someone
2 who's going to introduce you, you know, can pull it off?

3 A. Basically, like I mentioned earlier, you know, we look at
4 every aspect. We don't want to put anybody in there that's not
5 going to be able to do a proper introduction, that's going to
6 either leave us on the outskirts and not be able to win
7 their -- you know, their trust. So we look at the fact that --
8 were they're involved, how much knowledge do they have, are
9 they actually able to introduce them, do they have the ability
10 to do it within the structure of the organization.

11 And at that point we knew Victor couldn't do it, but
12 Mr. Delgado could definitely do it.

13 Q. Okay. So what -- so part of the ruse was going to be to
14 blame the two individuals that received the million dollars in
15 El Paso?

16 A. Correct.

17 Q. Okay. And how much instruction did give Mr. Delgado on
18 what to say?

19 A. Basically, we -- we told him to try to put the blame on the
20 two guys, because one of them did have an issue in Atlanta with
21 a flight. So we told him just to use that as the ruse that
22 these guys were initially looked at in Atlanta, and they just
23 continued looking at them after Atlanta.

24 Q. One of two that had flown to Atlanta had an issue with a
25 flight?

1 A. Correct. My understanding is that he had an issue with
2 identification. He didn't have the proper identification when
3 he was trying to catch that flight.

4 Q. Okay. And by proper identification, was he a Mexican
5 citizen?

6 A. Yes.

7 Q. And Atlanta is an international airport?

8 A. Absolutely.

9 Q. So would it be likely that TSA, when he was trying to get
10 on the airplane, would have scrutinized him?

11 A. Yes.

12 Q. Okay. But he did eventually get on the plane, correct?

13 A. Yes.

14 Q. So you decided to use that as a ruse to explain why these
15 people got caught?

16 A. Absolutely. It was an actual -- a factual event that we
17 could kind of hang our hat on and use it against them.

18 Q. And did you instruct him to talk about a global -- a GPS?

19 A. Yeah. We talked about them renting a vehicle. And we just
20 said, Hey a lot of these -- one of the vehicles will actually
21 have a GPS. And it's feasible that law enforcement would be
22 able to use that GPS in the vehicle to -- to monitor it.

23 Q. So you gave him a piece of infor- -- Mr. Delgado -- a piece
24 of information that he could use by saying, Look. You rented a
25 car.

1 A. Yes.

2 Q. So you could have been tracked?

3 A. Correct.

4 Q. And what other information did you provide to him?

5 A. At that point the -- basically, to try and see if he could
6 introduce me as the person assisting him to, one, recover the
7 million dollars, so we could buy the time that we needed just
8 to kind of start winning some of the -- you know, the contacts
9 with them.

10 And two, if it looked -- it would actually happen, if
11 it was feasible, to try to introduce us to the organization to
12 try to help move the money, any further money they may need
13 moved, as compensation.

14 Basically, let us try to move some of your money that
15 you still have to pay you back while we're waiting to see if we
16 can recover the million dollars.

17 Q. Okay. So you were trying to claw your way up the
18 organization; is that correct?

19 A. Yes, ma'am.

20 Q. Because people that are at the bottom level are not as
21 important or why?

22 A. Well, basically, you know, our goal is to reach the
23 ultimate owners of the drugs, the money, whatever schemes it
24 is.

25 You know our jobs, as federal agents, is to serve, you

1 know, the citizens of the United States, to try to sever the
2 head of the snake. So we're always -- like Ms. Debra is
3 saying, we're always going to claw our way up as far as we can
4 until we can't do it anymore.

5 Q. Did Mr. Delgado -- did you want him to try to introduce you
6 and make a phone call, consensually monitored phone call, to
7 each individual he was associated with?

8 A. Initially -- I think we just wanted to start with Paco
9 initially, and see how far we could get with him. And see --
10 because at that point we didn't really know, besides what he
11 was telling us, what the hierarchy was.

12 Q. Who did he tell you Paco was?

13 A. I don't recall exactly who he said -- what his position was
14 in the organization or what he did in the -- you know, in
15 the --

16 Q. We're going to play some of the tapes. If that refreshes
17 your memory, you let the jury know.

18 A. Absolutely.

19 Q. Okay. And -- but somehow you know you wanted to start with
20 Paco because he appeared what?

21 A. He appeared to be the first contact that -- that would
22 be -- the first contact that we needed to reach out to, or that
23 Mr. Delgado needed to reach out to at that point.

24 Q. And when Marco Delgado was on the phone talking to his
25 co-conspirators, where was he physically located?

1 A. He was physically located in our office in Atlanta.

2 Q. Okay. And did he make a call -- successful calls with
3 Paco?

4 A. Yes.

5 Q. Did he tell you that there was another individual named
6 Chuy?

7 A. Yes.

8 Q. Did he make calls with Chuy?

9 A. Yes.

10 Q. Did he tell you that there was another individual by the
11 name of Isidro?

12 A. Yes.

13 Q. Did he tell you there was another individual by the name of
14 Lilian de la Concha?

15 A. Yes.

16 Q. Did he tell you she was part of the money movement
17 organization?

18 A. Yes.

19 Q. Did he also tell you he had a relationship with her?

20 A. Yes.

21 Q. And did he make several telephone calls to her?

22 A. Yes.

23 Q. All of these are recorded; is that correct?

24 A. Yes, ma'am.

25 Q. Okay. Did he also tell you about an individual named

1 Pedro?

2 A. Yes.

3 Q. And was an attempt made to talk to Pedro?

4 A. I don't recall.

5 Q. Okay. I will draw your attention, then, to Government's
6 Exhibit Number 50A, which is a transcript.

7 A. Yes, ma'am.

8 Q. And I'm going to try not to put everybody to sleep and just
9 do snippets, but then I'll ask you about some of the
10 transcripts.

11 And again, in anticipation of testimony, did the
12 Government provide the transcripts to you so that you could
13 correct or read the Spanish and make sure that the translation
14 in English was consistent?

15 First of all it was right, because you're a native
16 Spanish speaker, correct?

17 A. Yes, ma'am.

18 Q. And secondly, was consistent with the understanding that --
19 of the way money launderers and drug dealers talk?

20 A. Yes, ma'am.

21 Q. Okay. Drawing your attention first to 50A.

22 Did Mr. Delgado, on September 9th, 2007, at 10:19 in
23 the morning, at your behest, make a phone call to Lilian de la
24 Concha?

25 A. Yes, ma'am. A phone call for the duration of 16 minutes.

1 MS. KANOF: Your Honor, may we publish?

2 (Call partially played.)

3 THE COURT: Why don't you stop it for a second.

4 You have the transcript also?

5 MS. KANOF: Yes, sir.

6 THE COURT: Ladies and gentlemen of the jury, I'll
7 remind you of the instruction I gave you previously. Remember
8 that the actual exhibit is the recording, not the transcript.
9 The transcript is provided for you so you can go along and see.
10 But you're also to determine whether it's accurate. Not only
11 for the -- what is said is on the transcript, but that it's
12 been -- if it's in Spanish, that it's been -- those of you that
13 know Spanish -- that it's been interpreted correctly.

14 Go ahead.

15 MS. KANOF: Thank you, Your Honor.

16 (Call played.)

17 BY MS. KANOF:

18 Q. Okay. First of all, let me ask you, Agent Ascencio.

19 You were there with Mr. Delgado when he made this
20 call?

21 A. Yes.

22 Q. And was he talking in a low tone?

23 A. Yes.

24 Q. Is that unusual?

25 A. To me it was, when he was making the phone call.

1 Q. Okay. He was trying to help you, and he was making a phone
2 call, but he was talking in a low tone?

3 A. Yeah.

4 Q. Do you know if maybe that's how talked to Ms. de la Concha?

5 A. No, no. I mean I recall making a comment to my fellow
6 agents when he did that, because I found him a little reluctant
7 initially with the caller.

8 Q. I'm sorry?

9 A. I found him a little reluctant initially to make this --
10 this phone call to her.

11 Q. Okay. But he did agree to do it?

12 A. Yes.

13 (Call played.)

14 BY MS. KANOF:

15 Q. Okay. He's talking -- he refers to Pedro as the
16 accountant.

17 A. Correct.

18 Q. In drug trafficking do they sometimes give titles to
19 individuals based on their position in the organization?

20 A. Absolutely.

21 Q. So this doesn't necessarily mean that Pedro was an actual
22 accountant?

23 A. No, it does not mean that he's a certified accountant. It
24 just -- it means that he handled the money. He was responsible
25 for counting it or having the people counting it. It was

1 ultimately his -- you know, his responsibility. Whatever
2 happens to the money until it gets to the second facet is his
3 baby, basically.

4 (Call played.)

5 BY MS. KANOF:

6 Q. Is there any reason, based on this conversation, for you to
7 believe that he was not telling her the truth?

8 A. Based on this conversation?

9 Q. I mean with regard to who the accountant was and physically
10 what actually happened that day.

11 A. No. Because he -- he's actually speaking on -- on his own
12 accord, on -- based on his own knowledge, stuff that he's
13 actually done, seen, people that he knows.

14 We knew none of this, really, until he really started
15 cooperating and calling these people.

16 Q. Okay.

17 (Call played.)

18 BY MS. KANOF:

19 Q. Okay. And that's-- now, many problems with the
20 identification, that's the ruse that you provided him?

21 A. Correct.

22 Q. He's beginning that ruse, correct?

23 A. Correct.

24 (Call played.)

25

1 BY MS. KANOF:

2 Q. When he talks about they gave us a chance to get ahead, and
3 these guys were already here in town, that's not information
4 you provided him?

5 A. No. No.

6 Q. So that would be a reflection of what had actually
7 happened?

8 A. Correct.

9 Q. Because basically, if he was telling her something
10 different, she would know?

11 A. Exactly.

12 (Call played.)

13 BY MS. KANOF:

14 Q. Okay. He's talking about making the movements for me, the
15 one from the currency exchange office.

16 Is that a common term, say, for money moving
17 organizations?

18 A. Yeah. Basically, they're either talking factually about a
19 change house, you know, a *casa de cambio*, or they're talking
20 about a house, a money house, somebody that has -- or that
21 holds the money while the transportation organization shows up
22 to pick it up.

23 (Call played.)

24 BY MS. KANOF:

25 Q. Did Mr. Delgado know that Isidro had -- this was Isidro

1 that got stuck, right?

2 A. Uh-huh.

3 Q. Okay. Did he know that Isidro had a California
4 identification with him? Did you tell him that?

5 A. No, I don't recall telling him that.

6 Q. Okay. And so that would have been something he already
7 knew?

8 A. Quite possibly, yes, ma'am.

9 (Call played.)

10 BY MS. KANOF:

11 Q. Okay. He talks about the dogs. They bring the dogs.
12 Did you tell him to talk about the dogs?

13 A. No.

14 Q. Did you ever discuss narcotic detector dogs with him?

15 A. I personally didn't.

16 Q. Okay.

17 (Call played.)

18 BY MS. KANOF:

19 Q. Are you aware that at some point Mr. Delgado was told by
20 ICE agents to be the -- pretend like he was going to be the
21 person that could help them get out of jail?

22 A. I know that that was part of the ruse that was used.

23 Q. Okay.

24 A. Correct. I don't know if he was told by one of my agents
25 or not.

1 Q. But you didn't tell him to do that?

2 A. No. No.

3 (Call played.)

4 BY MS. KANOF:

5 Q. Did you tell him to say that he couldn't afford for either
6 of those members of the organization to have a criminal record?

7 A. No.

8 (Call played.)

9 BY MS. KANOF:

10 Q. Okay. Did you tell him anything about dropping phones?

11 A. No.

12 Q. You didn't discuss, Tell them that you drop phones, or you
13 were going to drop phones?

14 A. No.

15 Q. No. And did you tell him that they have to do that
16 because, well, that you can guide you, that's another tracker?

17 A. Yeah. Actually, I would never tell him that initially
18 because we may want to try to get up on the phones. So that
19 would defeat the purpose.

20 Q. Okay. And when he says another tracker, do you think he's
21 talking about the GPS, or he's just talking about they can --
22 from the language that he uses, that -- that you can get up on
23 a phone? You can --

24 A. Well, basically from this conversation, he knows -- he has
25 knowledge that we could actually tap into phones for locations,

1 whether it's GPS or cell towers. So he knows that we're able
2 to, you know, get that information from the providers.

3 Q. Okay.

4 (Call played.)

5 BY MS. KANOF:

6 Q. Okay. Did you tell him anything about cloning phones?

7 A. No.

8 (Call played.)

9 BY MS. KANOF:

10 Q. So she tells him that we agreed that nobody was going to
11 answer except Pedro and Marco?

12 A. Correct.

13 Q. And Marco does -- does he appear surprised when she says
14 that?

15 A. No.

16 (Call played.)

17 BY MS. KANOF:

18 Q. Okay. What's a plaza in drug lingo?

19 A. It will be a facet, a person.

20 Q. A plaza?

21 A. Yeah.

22 Q. Okay. And did you -- when he says, Listen, Buddies. You
23 guys are people. And literally, there are six plazas.

24 A. Yes.

25 Q. Is he saying there's six people involved in this?

1 A. Right. Six people, six organizations, six groups. You
2 know it depends on -- but there's six elements that got
3 involved in this specific business transaction.

4 Q. And then he said, And Pedro is not a person. Do I explain
5 myself?

6 So basically, there are six plazas, or entities, and
7 Pedro is not one of them, correct?

8 A. Yeah.

9 Q. Okay.

10 A. Mainly since they already, you know, described him as an
11 accountant, he's probably an accountant on the outside.

12 (Call played.)

13 BY MS. KANOF:

14 Q. Okay. Now, because we have a lot to play, if you can look
15 at the transcript and we can just go over some parts of it so I
16 don't have to play all of it.

17 Look at page 16, please. And the whole page is
18 Mr. Delgado talking, correct?

19 A. Correct.

20 Q. In the beginning does he say -- the second -- And what the
21 favor is costing me. Do I explain myself? I told him, If you
22 think I'm going to allow for me to lose this.

23 Did you instruct Mr. Delgado to talk about his
24 investment and the fact that they were causing him to lose his
25 investment?

1 A. No.

2 Q. So that came from him?

3 A. Correct.

4 Q. And in the very middle of that, I'm not going to pay for
5 this operation.

6 Did you instruct him to say something like that?

7 A. No.

8 Q. Okay. I'm going to try to fast-forward this a little bit.

9 (Call played.)

10 MS. KANOF: Let me back up just a little bit.

11 (Call played.)

12 MS. KANOF: Okay. Gosh. I'm sorry I did that.

13 (Call played.)

14 MS. KANOF: I'm sorry. I started it over again. Let
15 me just...

16 (Call played.)

17 MS. KANOF: It's starting at the phone number, and I
18 have to take it back a whole page for it to -- okay.

19 Stop there.

20 (Discussion off the record.)

21 (Call played.)

22 BY MS. KANOF:

23 Q. Is Mr. Delgado instructing Lilian to talk to Chuy?

24 A. Yes.

25 (Call played.)

1 BY MS. KANOF:

2 Q. Does Liliana have Chuy's number?

3 A. No. She actually has to get it from Mr. Delgado.

4 Q. And does he provide that to her?

5 A. Yes, ma'am.

6 Q. Okay. And what does that indicate to you?

7 A. It indicates that he knew that facet intimately, but Lilian
8 did not.

9 Q. And although she was a member of the group, based on him
10 having this phone number, does that make you conclude anything?

11 A. It makes me conclude that he was more of an orchestrator
12 than she was.

13 Q. Okay. I'm going to ask you to look now at Government's
14 Exhibit Number 51.

15 (Call played.)

16 BY MS. KANOF:

17 Q. Is this phone call -- the recorded phone call that's
18 shortly after -- the phone call with Ms. de la Concha was at
19 10:19 and lasted 16 minutes, correct?

20 A. Yes.

21 Q. Do you do anything with the person that's assisting you, in
22 this case Mr. Delgado, in between phone calls?

23 A. We talked to him just to kind of -- since we're already
24 getting this ruse built, start getting tidbits of what to say,
25 what not to say.

1 At this point, if I recall correctly, we're telling
2 him not to be so long-winded.

3 Q. Not to be so long-winded?

4 A. Yes.

5 Q. Okay. So at 12:17 does he place a call for you to Chuy?

6 A. Yes.

7 (Call played.)

8 BY MS. KANOF:

9 Q. You notice that when Marco is talking, he says -- he gives
10 him a hug. I give you a hug?

11 A. Correct.

12 Q. What, if anything, does that indicate to you?

13 A. It means there's a connection there, a friendship.

14 (Call played.)

15 BY MS. KANOF:

16 Q. Okay. In this part, basically helping you.

17 A. Yes.

18 Q. He's -- okay.

19 He's telling -- he's telling you that because they're
20 interested in working with these people still, what I can do
21 is, I -- and then basically he's facilitating introducing you
22 now. He's starting that process, correct?

23 A. Correct.

24 (Call played.)

25

1 BY MS. KANOF:

2 Q. Okay. Chuy says that the other people, the owners?

3 A. Yes.

4 Q. Okay. *Dueños*. Who -- what is an owner in drug
5 trafficking?

6 A. An owner is going to be the actual organization. And we
7 see that several times where people will now refer to, Hey,
8 this belongs to this certain cartel or this certain individual.
9 They -- they keep that distance. It's a persona.

10 These are the people that are the actual true owners
11 of the money.

12 Q. And when he says, We can't tell him that -- We can't tell
13 them that that happened, because if I tell them that you have
14 to realize that then it's over; is that correct?

15 A. Correct.

16 Q. Did Mr. Delgado tell you that Chuy was the intermediary
17 between the money laundering group and the cartel?

18 A. I don't remember.

19 Q. But does it appear that he's the one that's talking to the
20 owners?

21 A. Absolutely.

22 (Call played.)

23 BY MS. KANOF:

24 Q. Is it common in drug trafficking organizations that they
25 work with family members?

1 A. Absolutely.

2 Q. And in this case it's his cousin, Chuy's cousin?

3 A. Yes.

4 Q. And it's Isidro that's Chuy's cousin, correct?

5 A. Correct.

6 Q. Okay.

7 (Call played.)

8 BY MS. KANOF:

9 Q. He's -- you told him to take the role of the individual
10 that's trying to get the people out of jail in El Paso,
11 correct?

12 A. Correct.

13 Q. Okay. And then when he says, Okay. If it -- if the -- if
14 they say it can't be done tomorrow, is he referring about
15 getting the money back?

16 A. Yes.

17 Q. Were a lot of these conversations made to appease people
18 that Delgado had the power to get the million dollars returned?

19 A. Correct.

20 Q. Okay. And holding himself out as a lawyer, he's saying
21 that he's going to be able to get the money. If it doesn't
22 come tomorrow, on page 10 of the transcript, does Mr. Delgado
23 say, Okay. Then like men, we will pay each other, and there it
24 is, in order to be able to keep working.

25 A. Correct.

1 Q. What's he talking about?

2 A. Basically, if it doesn't come to fruition and they're able
3 to get the money back, they're going to pay their part each.

4 Q. Tell the jury about paying back lost money.

5 A. Basically, once you get into a money contract with any type
6 of organization, they're going to know who you are, what your
7 assets are, who your family is. And then it is imperative that
8 you pay them back for -- for those -- for those facts.

9 Q. And if you don't?

10 A. And if you don't, basically, I mean at that point you're
11 putting yourself, your family, your assets, your properties in
12 danger.

13 Q. Now, if you look at Government's Exhibit Number 52, this is
14 a phone call that was made by Mr. Delgado at 1:55 p.m.,
15 September 9th, to Chilo, or Isidro, correct?

16 A. I don't have that.

17 Q. You don't have 52?

18 A. No, ma'am.

19 52A.

20 Q. Okay. I'm sorry. A means the transcript. 52 is the
21 actual call.

22 A. Yes, ma'am.

23 Q. Okay. Without having to play this call, if you would turn
24 to page -- I'm sorry -- well, yes. Page 7 of the transcript.
25 I think it begins at the bottom of page 6.

1 Does Mr. Delgado talk to him -- to Isidro -- about
2 wanting to continue the organization and what -- basically, not
3 failing?

4 A. Correct.

5 Q. If you could read Mr. Delgado's words starting at the very
6 bottom of page 6, just to the end of that box on the next page.

7 A. Correct. "If you want, tomorrow we will see about the ID,
8 right? Because I am going to be frank. We are not going to
9 let this fail. And, two, we are not going to look bad in front
10 of these people. But three, we need to -- we need you to be on
11 a straight line, because one loses credibility with stupidity
12 like this. They get derailed operations. It's ridiculous, but
13 let's see. Do you have the number?"

14 Q. Okay. And let's just go a little bit further.

15 What does Chilo say?

16 A. He says, "Yes, there -- there it goes." And he starts
17 giving the number.

18 Q. Okay. Does -- and is that a phone number?

19 A. Yes.

20 Q. Okay. Do you know whose phone number that was?

21 A. No, ma'am.

22 Q. Turn your attention to Government's Exhibit Number 53A, the
23 transcript of 53.

24 A. Uh-huh.

25 Q. On September 9th, after talking to Isidro at 8:56 p.m.,

1 does the Defendant make another call to Chuy?

2 A. Yes, ma'am.

3 Q. Turn to page 3 of that transcript, please.

4 A. (Witness complies.)

5 Q. In the middle of page 3 does Mr. Delgado tell Chuy, "And
6 then our people, the money exchanger over there, appears like
7 the one who made the only statement"?

8 A. Yes.

9 Q. Do you know what that's about?

10 A. No.

11 Q. Okay. And then, after Chuy says, "Yes."

12 "If they do accept it, as soon as it does not come out
13 with that, there will be no problem to recover the, um, the
14 issues, those products, right?"

15 Is that an example of code talking?

16 A. Yes. Exactly. They're talking about trying to recover the
17 money.

18 Q. Okay. And on page 6, the first large paragraph with
19 Mr. Delgado, does he say, "Yes. With these people we are not
20 going to burn them ourselves because of something dumb and even
21 less for that. You would still be talking about -- about huge
22 amounts and all that."

23 A. Yes, ma'am.

24 Q. Is Chuy surprised?

25 A. No.

1 Q. What does he say?

2 A. No.

3 Q. He just says, uh-huh?

4 A. Yeah. He just kind of...

5 Q. Okay. Please turn to Government's Exhibit Number 54. And
6 again, is he talking to Lilian de la Concha?

7 A. Yes, ma'am. September 7th, 2007.

8 Q. Okay.

9 A. September 10th, excuse me.

10 Q. September 10th at 8:43 a.m.?

11 A. Correct.

12 (Call played.)

13 BY MS. KANOF:

14 Q. Wait. Before we go on, when -- to your knowledge as a tech
15 agent --

16 A. Yes, ma'am.

17 Q. -- I'm going to your Title III tech agent experience.

18 To your knowledge, when a phone toll record shows the
19 amount of time that a call elapses --

20 A. Correct.

21 Q. -- does it start from the time that there's a connection to
22 the line?

23 A. Correct. It does.

24 Q. Okay. And so sometimes when voice mail picks up and --
25 when voice mail picks up, then you have to either hang up or

1 the voice mail goes to the point where it lets you leave a
2 message, correct?

3 A. Correct.

4 Q. And then you leave a message sometimes, correct?

5 A. Correct.

6 Q. Okay. So does -- when does the -- on a toll record, when
7 does the -- the time period elapse, and the end of the time
8 period, at what point in the call?

9 A. It basically -- depending on the provider, as soon as you
10 dial the number and it starts, you know, what we call a
11 handshake, starts making a handshake with the actual system, it
12 starts the time clock then.

13 So sometimes it could take up to 13, 14 seconds just
14 to connect from one cell tower to a land line to another cell
15 tower to a cell phone. And then -- then you have the voice
16 mails, and then if it's -- depending on the size of the voice
17 mail it could be substantial.

18 Q. Okay. And the farther away the cell towers are from -- or
19 what's a cell tower? I'm sorry.

20 A. A cell tower is the mechanism that transmits this data via
21 wave lengths, basically, is your cell tower -- cellular towers.

22 Q. And for example in El Paso, if there are cell towers right
23 on the other side of the border in Mexico, does the -- the
24 cellular telephone look for the closest tower?

25 A. Yeah. Basically, every cell tower has what's called a

1 friend list. So basically if you have a cell tower here, the
2 software itself will recognize other cell towers near it and it
3 will create a friend list. So if it hits capacity, if it hits
4 a snag, it drops a call, it will -- your phone will actually
5 look into that friend list and be like, Okay. I'm a cell
6 tower. I just lost it. I'll go to cell tower B through F.

7 Q. Okay. And does that take time?

8 A. It -- we're talking about milliseconds.

9 Q. Okay. And then -- but does a cell tower distinguish
10 foreign countries?

11 A. It will distinguish the actual phones, yes, the service.

12 Q. Okay. And does a cell tower distinguish separate states
13 like, say, in the United States?

14 A. Yes.

15 Q. It can distinguish between Texas and Georgia?

16 A. Absolutely.

17 Q. Okay.

18 (Call played.)

19 BY MS. KANOF:

20 Q. Again, was he whispering?

21 A. Yes.

22 (Call played.)

23 BY MS. KANOF:

24 Q. Okay. Delgado says, "I'm being honest, right? And
25 hopefully it can get situated, at least Chuy's priorities."

1 A. Correct.

2 Q. Okay. Again, does that distinguish Chuy as someone who
3 has, maybe, different priorities than the laundering
4 organization?

5 A. Basically, it distinguishes Chuy as having the most to
6 lose.

7 (Call played.)

8 BY MS. KANOF:

9 Q. Did you -- he -- throughout the conversations with the
10 co-conspirators, Mr. Delgado talks about it being Isidro's
11 fault, correct?

12 A. Uh-huh. Correct.

13 Q. First, the identification in the Atlanta airport, correct?

14 A. Correct.

15 Q. And then he starts talking about him having a backpack that
16 dogs hit on?

17 A. Correct.

18 Q. Did you tell him to throw that information in?

19 A. I didn't, no.

20 Q. Okay. So he went -- as far as you know, when he starts
21 talking about Isidro also having a backpack that the dogs hit
22 on, that was his idea?

23 A. It came from him, yes. I'm not sure where the -- the
24 information came from.

25 (Call played.)

1 BY MS. KANOF:

2 Q. Okay. One. She asks him, "Listen, sweetheart, how much
3 was it?"

4 He responds, "What was confiscated?" correct?

5 She acknowledges.

6 And what does he say?

7 A. "One." For the one million.

8 Q. Okay. So they use the word one for one million in this
9 organization, correct?

10 A. Correct.

11 Q. So then 600 would be 600 million?

12 A. Yep.

13 Q. 500?

14 A. 500 million, correct.

15 Q. Okay.

16 A. If they were talking about any smaller, they would always
17 say, *uno chico, dos chicos*. One small, two small. 100,000,
18 200,000.

19 Q. In this case you know specifically that the one means one
20 million?

21 A. One million. They're talking large amounts.

22 Q. Because that's what was confiscated, correct?

23 A. Correct.

24 (Call played.)

25

1 BY MS. KANOF:

2 Q. Okay. I'm going to ask you to turn to page 15. Let's see
3 if I can get it there. It's not moving.

4 On page 15, does Lilian say in the middle of the page,
5 "Okay. Perfect. Listen. In a little while I'm going to
6 activate another telephone."

7 A. Correct.

8 Q. Does that have any particular meaning to you in your job?

9 A. Absolutely. Unfortunately for us, a lot of times once
10 there's an actual event, a law enforcement event, people will
11 drop their phones. They'll stop using them. They'll get
12 another one in order to, you know, keep us from getting on the
13 phones, whether it's us or the Mexican authorities.

14 Q. Okay. And then when -- and he responds, "Perfect"?

15 A. Exactly.

16 Q. So this is something that he thinks is a good idea?

17 A. Yes.

18 Q. And then she says, "Just for us"?

19 A. Correct.

20 Q. Okay. And what would that indicate to you?

21 A. Basically, that she was going to get a phone that was going
22 to be used for the communication between her and Mr. Delgado
23 and nobody else.

24 Q. Does she say on the bottom of page 15, "Yes, I'll give it
25 to you. I bought it already. I already have it, but I'm just

1 going to buy the card, because I saw that I don't have a
2 balance, because the balance expired because I hadn't used it.
3 So the card has a month."

4 What -- what kind of card is she talking about?

5 A. She's talking about a SIM card, a prepaid SIM card, where
6 if --

7 Q. What's that?

8 A. It's basically a -- a SIM card is a chip that you put into
9 a cell phone that gives it a unique identifier to be able to
10 talk to the cell tower, so you could communicate.

11 Every SIM card is unique. Every SIM card, prepaid
12 ones for the most part, will have -- you could add your own
13 amount of money. And a lot of them will expire, because that's
14 how the providers make their money.

15 So you put in \$20, you don't use it, in 30 days you
16 lose it. You've got to put another \$20 on it.

17 Q. If you'd go to page 19.

18 A. (Witness complies.)

19 Q. The first place where Mr. Delgado talks on page 19, does he
20 tell her, "I don't want to let this fall apart"?

21 A. Correct.

22 Q. Now, part of him saying that is because they want to
23 introduce you, right?

24 A. Correct.

25 Q. But how does she respond?

1 A. She says, "No. It cannot -- it cannot fall apart on us."

2 Basically she's agreeing with him, that she wants to
3 continue with it.

4 Q. And like, "No, no. No, that can't be"?

5 A. Exactly.

6 Q. "So much planning, so much thought, so much waiting, that
7 stupidity from them," and then he interrupts her, correct?

8 A. Correct.

9 Q. Okay. And finally, if you would look to page 20 of that
10 particular transcript.

11 A. (Witness complies.)

12 Q. The last thing that Lilian says is, "Did you talk to *los*
13 *señores*?"

14 A. Correct.

15 Q. And for some reason, the person that transcribed it put it
16 in -- the word *los señores* in quotes.

17 A. Quotes, correct.

18 Q. Why is that?

19 A. Apparently, they thought that the *los señores* what they
20 were talking about were important. So probably talking about
21 the actual males that were involved in the conspiracy in this
22 particular currency transaction, they're involved in it.

23 Q. Okay. Turn your attention to Government's Exhibit Number
24 55A.

25 A. (Witness complies.)

1 Q. Again, he's speaking with Ms. de la Concha; is that
2 correct?

3 A. Correct.

4 Q. And let me go ahead and turn it on. It's not a long one.
5 I'm sorry. This is on September 10th at noon, correct?

6 A. Correct. September 10th.

7 (Call played.)

8 BY MS. KANOF:

9 Q. He's telling her he's already looking for a ring?

10 A. Correct.

11 (Call played.)

12 BY MS. KANOF:

13 Q. Okay. So he's given -- in the first phone call with her
14 Mr. Delgado gave Lilian de la Concha Chuy's phone number, and
15 now it appears as though she used it?

16 A. Yes. She used it and contacted Chuy.

17 (Call played.)

18 BY MS. KANOF:

19 Q. Okay. What -- now, all of a sudden we're talking about
20 European Euros.

21 A. Correct.

22 Q. And 15 of them?

23 A. Correct.

24 Q. It's previously been established that one of these
25 individuals was a Spanish citizen.

1 A. Correct.

2 Q. Do they use the -- is Spanish -- is Spain one of the
3 countries that is part of the European area that uses Euros?

4 A. Yes.

5 Q. Okay. And what are Euros?

6 A. Euros is a currency used in that -- that country.

7 Q. Okay. And does this have any particular significance to
8 you what she says?

9 A. Absolutely. That they're going to try to make arrangements
10 for another 15 million Euros coming out of Spain.

11 Q. Okay. And actually, Euros are worth more than the American
12 dollar, correct?

13 A. Correct. One Euro is 1.23, I believe, dollars.

14 Q. So another 25 percent, or 20 percent above that, would be
15 the actual amount in dollars?

16 A. Correct.

17 Q. More than \$15 million?

18 A. Correct.

19 (Call played.)

20 BY MS. KANOF:

21 Q. She tells him no, that's what they're telling me now. They
22 are going to say from now on they don't want proof.

23 What proof are they trying to acquire?

24 A. They're trying to acquire the proof on the money that was
25 actually seized.

1 Q. Okay. And what kind of proof is there to give a drug
2 trafficking or money laundering organization that money was
3 seized?

4 A. Basically, initially, it would be an abandonment form that
5 we give people.

6 Once we seize money, if we do it through a local
7 police department, sheriff's office, they'll have them sign an
8 abandonment form or a receipt, if they don't want to sign an
9 initial receipt, receipt stating that the money was in
10 possession of whatever organization took it.

11 Q. So is one of the things that Delgado is pretending to do is
12 to try to get evidence that the money was actually seized by
13 the Government and not stolen?

14 A. Correct.

15 Q. Okay. And what do they do when they get this affirmation
16 that money has been seized from the Government?

17 A. In this particular instance, I'm not sure. But what
18 usually happens with these organizations, once they get
19 confirmation that the money was not -- was not stolen, one, it
20 saves face for the transportation cell that moved the money, so
21 they're able to work it off. They're able to get other
22 pickups, other money. And basically, they start paying the
23 organization for the money that was lost while they still try
24 to recover it.

25 Q. In addition to trying get the million back, he's also

1 trying to get proof that it was actually seized and not stolen,
2 correct?

3 A. Correct.

4 Q. Are you aware -- or let me ask you this.

5 Sometimes, to facilitate an undercover operation, do
6 you provide a fictitious seizure report to the individual who's
7 introducing you into the organization?

8 A. Yes.

9 Q. Okay. Do you know whether or not that was done in this
10 case?

11 A. Yes.

12 Q. And so what did ICE or HSI do with regard to this problem
13 with proving that the money was actually in the hands of the
14 federal government?

15 A. Basically there was a receipt made, if I recall correctly,
16 by -- here in Texas -- that it was seized by a local -- either
17 police department or sheriff's office.

18 Q. In this case the Department of Public Safety?

19 A. Correct.

20 Q. And why would you say that a local or state organization
21 took the money instead of the federal government?

22 A. We always try to do that. If we're involved, we try to
23 give them a receipt from a local organization, mainly if
24 they're working with us. Or even if it's just a wall-off, or
25 we had a local stop them, but we had information.

1 One, it keeps us out of their knowledge. They don't
2 know that the federal government is working on it. And at
3 least in Georgia, it was easier to explain that, you know, the
4 small little department in the middle of nowhere in Georgia
5 stopped them on a fluke, by accident. So they don't --

6 Q. That actually did happen in this case, right?

7 A. Right, which actually happened in this case.

8 Q. Okay. And is it true -- I mean, who usually -- say you're
9 not doing an undercover. Who usually asks for that proof once
10 somebody has been arrested?

11 A. Oh. Actually, we've had several occasions on several cases
12 where we've seized money and the transportation members, the
13 cells that actually move this money, are aware of this. And
14 they'll ask us up front. They will tell us, I'm not going to
15 talk to you. I want nothing to do with you. I'm not going to
16 cooperate, but give me my receipt. So they know to ask for it.

17 (Call played.)

18 BY MS. KANOF:

19 Q. He says, So then I'm telling you our people are fulfilling
20 their part for us.

21 And she doesn't deny that?

22 A. Yeah, correct.

23 (Call played.)

24 BY MS. KANOF:

25 Q. He says, I'll even put it in the bank for them.

1 A. Yeah.

2 Q. What did you think about that comment?

3 A. Basically at that point, we had already talked about some
4 of the facets of the -- our operation, which would be to use
5 banks to move the money.

6 Q. Did they put a million dollars in cash in banks?

7 A. Absolutely not.

8 Q. Because that would generate reports, correct?

9 A. Correct. Correct.

10 Q. So you -- you talked to him. You instructed him that
11 sometimes banks are used?

12 A. Yes.

13 Q. Did you tell him what amounts of money were used at banks?

14 A. No.

15 Q. Okay.

16 (Call played.)

17 BY MS. KANOF:

18 Q. Okay. So she tells him -- first of all, he talks about
19 Pedro managing him.

20 And she starts talking about her conversation with
21 Chuy again, right?

22 A. Correct.

23 Q. And she says, in fact, they are still at the border waiting
24 for news from you that -- does that mean on the other side of
25 the border?

1 A. I --

2 Q. Or you don't know?

3 A. I don't know. But they're basically -- they're at the
4 border waiting to figure out what the outcome is --

5 Q. Okay.

6 A. -- either on the Mexican side or the U.S. side.

7 Q. And they want to know what they should do?

8 A. Correct. Correct.

9 Q. And they're waiting for who to tell them what to do?

10 A. Marco.

11 (Call played.)

12 BY MS. KANOF:

13 Q. Okay. So we're talking about a rental car here, right?

14 A. Correct.

15 Q. And it's pretty clear that de la Concha and Chuy have also
16 discussed them using a rental car?

17 A. The rental car and the location, yes.

18 Q. And where did you get the location from?

19 A. That they're at the border.

20 Q. Okay. And we thought that it was already in its place of
21 origin.

22 What does that refer to?

23 A. We thought that they were at their place of origin, that
24 they were back wherever they came from in Mexico, whatever
25 their residence is.

1 Q. Okay. Last transcript.

2 THE COURT: Before you start.

3 MS. KANOF: Okay.

4 THE COURT: It's time for our morning break.

5 MS. KANOF: Yes, Your Honor.

6 THE COURT: We'll be in recess for the next 15
7 minutes.

8 (Recess taken; open court.)

9 THE COURT: You may continue, Ms. Kanof.

10 MS. KANOF: Thank you, Your Honor.

11 BY MS. KANOF:

12 Q. Agent Ascencio, if you would look at Government's Exhibit
13 58A.

14 A. (Witness complies.)

15 Q. On September 14th of 2007, at 4:00 p.m., did you -- did
16 Mr. Delgado have a lengthy conversation with Francisco
17 Fernandez, also known as Paco?

18 A. Yes.

19 Q. Okay. And by this time -- this is four days later. Most
20 of the other calls were on September 9th and September 10th,
21 correct?

22 A. Correct.

23 Q. Did anything happen between the 10th and the 14th? Were
24 there any -- anything of significance?

25 A. Nothing of significance.

1 Q. Okay. And so now it's the 14th of September, and this call
2 is between Paco and the Defendant, correct?

3 A. Correct.

4 (Call played.)

5 BY MS. KANOF

6 Q. Okay. Who is Rafa Solis?

7 A. Rafa Solis is one of my UC personas.

8 Q. And in this particular -- you said one of. Do you -- when
9 you're going to play the part of an undercover infiltrating
10 into an organization, do you actually have identification made
11 and a back story about your life and all of that kind of stuff?

12 A. Yeah. Correct. Once you go through the undercover school
13 that we were speaking about earlier, you actually build a
14 persona. You get credit cards, you get library cards, you get
15 a credit history, criminal history if it's necessary.

16 You get every facet that you would need, depending on
17 the investigation, to corroborate who you are, where you've
18 been, and where you're going.

19 Q. Okay. Do you have more than one?

20 A. For Atlanta I only had one that was -- that was
21 backstopped.

22 Q. Okay. So for Atlanta, Rafa Solis was your most complete
23 persona?

24 A. Correct.

25 Q. And so it's Rafa Solis that he's going to try to introduce

1 into the organization, correct?

2 A. Correct.

3 Q. Agent Ascencio, did you ever tell Victor Pimentel about
4 Rafa Solis?

5 A. No. No, we wanted to keep them separate.

6 Q. Okay. And is that policy?

7 A. It is actually not policy by the agency. It's policy that
8 we teach at the -- or suggest we teach in UC school.

9 You want to keep your persona to the people that
10 you're working with, not the people on the outside.

11 Q. To your knowledge, was Victor Pimentel ever part of the
12 undercover?

13 A. No.

14 Q. All right. And he's going to try to introduce you, right?

15 A. Yes.

16 (Call played.)

17 BY MS. KANOF:

18 Q. All right. When you make a decision -- who makes the
19 decision? The person, the informant that's introducing you, or
20 the agents, as to who to target to introduce you to?

21 A. It will be the agents.

22 Q. Okay. So who made the decision that it should be Paco that
23 you're introduced to?

24 A. It was us.

25 Q. And what was that based on?

1 A. It was based on who we would have a more chance of actually
2 reaching our goals, initially.

3 Q. Do you recall why you picked Paco?

4 A. I don't.

5 (Call played.)

6 BY MS. KANOF:

7 Q. For some reason we're not hearing Paco. We hear him better
8 later. But...

9 A. Basically, he has the phone to his ear and it's not being
10 recorded all the way around until he puts it on the speaker
11 phone.

12 Q. Oh, okay. Who has his phone to his ear?

13 A. Mr. Delgado.

14 Q. Okay. And you needed for it to be on speaker phone to
15 record it?

16 A. Yeah. Actually, I remember the initiation of this phone
17 call. We gave him a recorder to put on. He put it in the ear
18 here, and he put the phone on the other ear. So the whole time
19 that this is going on I'm trying to tell him, you know, to
20 switch it to the other ear.

21 Q. And while we're talking about phones and technical
22 problems, what's a push-to-talk?

23 A. Push-to-talk is a technology where cell phones are able to
24 use a type of radio to talk one -- you know, one person to
25 another.

1 Q. Is it sort of a very modern advanced walkie-talkie?

2 A. It basically is. Actually, a push-to-talk is not like an
3 analogue phone. It's actually a digital signal that is able to
4 be interpreted pretty quickly. But because of that aspect,
5 it's also to be encrypted severely.

6 Q. It's what? I'm sorry?

7 A. It's able to be encrypted.

8 Q. What do you mean?

9 A. Encrypted means that they could actually get third-party
10 software and encrypt the digital audio from push-to-talk, or it
11 can it be easily obtained.

12 Q. Was Nextel the company that provided push-to-talk services?

13 A. Yes, ma'am.

14 Q. And in push-to-talk services, did you actually have to dial
15 a phone number?

16 A. No.

17 Q. So the only person that you could communicate with would be
18 another person that had the Nextel push-to-talk feature?

19 A. You would be able to communicate to the -- with the person
20 that had the actual push-to-talk number, or a group of people
21 if you had a group talk. But it would be specific to those
22 people.

23 Q. And for some period of time, including the period that's
24 covered by the conspiracy in this case, who was the primary
25 user of Nextel push-to-talk other than law enforcement?

1 A. During this time period was usually Hispanics.

2 Q. And Hispanics doing what?

3 A. Hispanics doing illicit criminal activities.

4 Q. Okay. Why is that?

5 A. Because you know, just like us, they have a means of
6 database where they know what's able to be used. You know,
7 they always try to keep a step ahead of us. So they know the
8 technology, to be honest with you, as well as we do.

9 Q. Okay. So you're saying that drug trafficking
10 organizations, money laundering organizations, keep current
11 with the technology available?

12 A. Absolutely.

13 Q. And you said that Nextel push-to-talk could be encrypted.
14 Was that one of the reasons law enforcement used it, correct?

15 A. Correct.

16 Q. And also, was that a reason that illegal conduct was often
17 communicated over Nextel push-to-talk?

18 A. Yes, ma'am.

19 Q. They don't use it so much anymore?

20 A. Nextel has been a dying technology, mainly, in the
21 United States.

22 (Call played.)

23 BY MS. KANOF:

24 Q. Okay. That basically indicates that he finally got your
25 signals and...

1 A. At that point I actually put the phone on speaker phone.

2 (Call played.)

3 BY MS. KANOF:

4 Q. Okay. You notice that -- first of all, what does the he
5 mean by he had the tourist visa in back in his house?

6 A. Basically, he's talking about Isidro and the gentleman
7 coming into the States.

8 Q. Okay. And --

9 A. And that they're back at their house because of what he was
10 able to accomplish.

11 Q. But he refers to the money as confiscated merchandise,
12 correct?

13 A. Correct.

14 Q. Is there any time, in any of the undercover calls that
15 Mr. Delgado did for you, that they ever used words that are --
16 other than the Euros, that are money?

17 A. They -- no. Not actual currency, no.

18 (Call played.)

19 BY MS. KANOF:

20 Q. Did you think he was testing you when he said he preferred
21 to say it in Spanish?

22 A. No. I think he was more comfortable with his native
23 language.

24 Q. Okay. So now you're part of this conversation; is that
25 correct?

1 A. Yes. Correct.

2 (Call played.)

3 BY MS. KANOF:

4 Q. Did you tell him to switch from talking about Isidro's
5 documentation problem at the airport to talking about drug --
6 narcotics?

7 A. No. He's basically flying solo on that one.

8 (Call played.)

9 BY MS. KANOF:

10 Q. That's you?

11 A. (No verbal response.)

12 BY MS. KANOF:

13 Q. Okay. Certainly you have Skype at HSI?

14 A. Yes. Yes.

15 Q. Okay. Why didn't you want to use it?

16 A. Because we don't want to put face -- face with face at that
17 point.

18 Q. At this point, until you're --

19 A. Correct.

20 (Call played.)

21 BY MS. KANOF:

22 Q. So those two pages, pages 12 and 13, are you basically
23 explaining to him what the scheme was for you to infiltrate
24 that you explained with Delgado?

25 A. Yeah. Basically, we're giving him the ruse of what we

1 believe took place. Once again, all we're trying to do is just
2 build that filter, just buy the time to be able to, one,
3 continue saving face, and continuing working with the
4 organization.

5 Q. Because I notice you don't say anything about dogs. You go
6 back to the problem of the airport, correct?

7 A. Correct.

8 Q. You even named Hartsfield, which is the Atlanta airport,
9 correct?

10 A. Correct.

11 (Call played.)

12 BY MS. KANOF:

13 Q. Okay. When you say certain threats that have been put on
14 him, how do you know that there were threats?

15 A. Actually Mr. Delgado, at that point, had informed us that
16 he had been in contact and there had been some threats that
17 Lilian and Chuy had gotten.

18 Q. Had received?

19 A. Yes.

20 Q. At this point?

21 A. Yes.

22 Q. Okay.

23 (Call played.)

24 BY MS. KANOF:

25 Q. When Marco introduced you, he doesn't say what you do for a

1 living.

2 A. No.

3 Q. He -- what does he say? How are you related to him?

4 A. Basically, that we've known each other for years.

5 Q. And he's the one that helps you out?

6 A. Yeah. Correct.

7 Q. Okay. So is that common, when they introduce somebody as
8 an undercover?

9 A. Absolutely. We do that for several different reasons. The
10 main reason is because, you know, we're building an ally. And
11 any time you build an ally it's easier to slip up as an
12 undercover. So you want to just -- we instruct everybody to be
13 as vanilla or as, you know, plain as possible. Don't get into
14 too many details that could stump him or I and ultimately put
15 the investigation in some type of jeopardy, or worse, put the
16 UC agent in some type of jeopardy.

17 Q. So if they label you like -- if he said you were an
18 accountant and you're not good with accounting --

19 A. Exactly.

20 Q. -- you'll get caught?

21 A. Absolutely.

22 Q. So they're instructed to be very general?

23 A. Correct.

24 (Call played.)

25

1 BY MS. KANOF:

2 Q. Okay. When you're telling them it might take some months,
3 are you buying time so that you can go undercover and
4 investigate?

5 A. Absolutely. We're planting the seed already, letting them
6 know it's going to be a long process. And at that point we're
7 able to start talking about, Well, it's going to take this
8 long. Let us start making money. Let us start paying it back.

9 (Call played.)

10 BY MS. KANOF:

11 Q. Delgado is referring to the fact that Paco is fluent in
12 English, correct?

13 A. Yes. Actually, when we first started the phone call we
14 were hoping to do it in English the whole way to avoid having
15 to do a transcription -- translation.

16 Q. Okay. Expensive, time-consuming?

17 A. Absolutely.

18 (Call played.)

19 BY MS. KANOF:

20 Q. Okay. He verifies, in fact, that there have been death
21 threats?

22 A. Yes, ma'am.

23 Q. When do -- when money is -- a large amount of money is
24 seized, is that common?

25 A. Yes.

1 Q. And is there an expectation from the drug organization,
2 when you -- oh.

3 Are there death threats, in your knowledge and
4 experience as an agent, when somebody has lost someone's
5 inheritance?

6 A. No.

7 Q. Are there death threats, in your experience, when somebody
8 has lost somebody's gambling money?

9 A. No.

10 Q. So this is consistent and typical of a drug organization?

11 A. Yes, ma'am.

12 Q. Is there an expectation that the people who participated in
13 the trans- -- either the transportation of the drugs or the
14 transportation of the money make good on it?

15 A. Absolutely. Once you get into a contract, like I mentioned
16 earlier, they know who you are. They either get your IDs or
17 figure out where you live. You have to take them to your
18 house. So that expectation is there from the beginning.

19 If anything happens, you default on that contract, as
20 they call it, you're required to pay, either liquidate your
21 properties, pay cash, or pay with something else.

22 (Call played.)

23 BY MS. KANOF:

24 Q. When Paco says that there's a problem that's separate from
25 us, did you ask Mr. Delgado later what he meant by that?

1 A. I don't recall.

2 Q. Okay. And did you have an understanding of what that might
3 have meant?

4 A. No, ma'am.

5 (Call played.)

6 BY MS. KANOF:

7 Q. Okay. Delgado says that Chuy is -- feels helpless during
8 the time he meets with these people.

9 And again, does that verify that Chuy is the
10 intermediary with the DTO, with the drug trafficking
11 organization?

12 A. Absolutely. It shows that Chuy was the conduit between the
13 actual owners of the money, the drug cartel, and this group of
14 people that took on this contract.

15 (Call played.)

16 BY MS. KANOF:

17 Q. So when Paco says everybody has to pay for this, that,
18 again, is corroborating that it's a drug trafficking
19 organization?

20 A. Absolutely. He's complaining, because of a mistake, they
21 all have to pay for it.

22 (Call played.)

23 BY MS. KANOF:

24 Q. Okay. You -- what are you doing here?

25 A. At this point, I'm actually -- I'm planting the seed about

1 if we're able to continue doing business, getting money
2 contracts, that I have the ability, through my company's bank
3 accounts, to move this money electronically. You know, like I
4 said, without doing it in cash, because it's just dangerous
5 walking around with cash.

6 Q. So did Mr. Delgado ever tell you that this was not drug
7 money?

8 A. No.

9 (Call played.)

10 BY MS. KANOF:

11 Q. When he's talking about these people think we stole from
12 them and who could begin using violence, how does Mr. Delgado
13 react?

14 A. He continues with the conversation.

15 Q. Worried? Shocked? Anything?

16 A. No, just normal.

17 (Call played.)

18 BY MS. KANOF:

19 Q. Okay. Is it -- does it have any significance to you that
20 two of the members of the conspiracy, Pete and Chuy, are
21 willing to put up property value to \$3 million?

22 A. Correct.

23 Q. How does that happen?

24 A. Basically, you know, they know who they are, and they
25 probably know about these properties. So if they default on

1 this contract, you know, they're already expecting that they're
2 going to have to turn over the property or liquidate it to be
3 able to pay back the contract that was lost.

4 Q. Okay. And is it common that they would pledge something
5 that they owned to the cartel so -- to take place of the money
6 they lost?

7 A. Absolutely. Look. You're always going to have somebody
8 that introduces you to a money laundering organization. But
9 with that introduction, you have to build your own rapport.
10 You have to build your own confidence.

11 So until you do that, they're going to want some type
12 of collateral to know that, hey, you're going to do good on
13 this contract, which is usually money.

14 (Call played.)

15 BY MS. KANOF:

16 Q. Okay. Do you know whether or not Lilian actually told
17 Mr. Delgado that someone had chambered a round on Chuy?

18 A. I don't know.

19 Q. You don't. Okay. It didn't occur in the any of the
20 conversations.

21 A. Correct.

22 Q. Okay. But does it appear that he understands what happens
23 when you lose money?

24 A. Yes.

25 (Call played.)

1 BY MS. KANOF:

2 Q. Okay. Colima. Were you present when Victor Pimentel told
3 ICE agents that he and his -- and Marco were going to drive to
4 Colima to take the million dollars?

5 A. No. I knew that it was going to Mexico from the Atlanta
6 stop, but not specifically where.

7 Q. Okay. So this -- so you heard Colima for the first time?

8 A. Yes.

9 Q. But does Colima have any kind of significance to you?

10 A. Yes, ma'am.

11 Q. What significance does it have?

12 A. Well, Colima has always been known as a drug state for us,
13 a narco state. It's one of the states that's controlled by the
14 cartels, specifically the Sinaloa, because they still control
15 one of the ports of entry, which is a vital port of entry,
16 which is Manzanillo. That's where, for years, we've been
17 investigating where they get a lot of precursors.

18 Q. What's a precursor?

19 A. Precursor is what they use to make drugs. For example,
20 methamphetamine. They need certain, you know, ingredients to
21 be able to make this type of drug. So it's always been a state
22 of interest, you know, to the federal government.

23 Q. So when Delgado mentioned Colima is where they were going
24 to meet, would you have been able to go to Colima, Mexico, to
25 make that meet?

1 A. No. Actually, not.

2 Q. And why is that?

3 A. Because of the safety, the safety factor. I mean
4 basically, you're going into a lion's den. That's where your
5 boss is, the people working -- you know, pulling the strings in
6 these organizations are stationed, working -- residing there.
7 And the last thing you want to do is get somebody from an
8 agency, whether it's federal or state, and put them in danger.
9 We would never do that.

10 Q. And so are there rules and regulations about you actually
11 leaving the United States?

12 A. Yes.

13 Q. And what are those?

14 A. Basically, before you do any type of travel it needs to be
15 vetted through not only your law enforcement undercover liaison
16 that you're fit for that type of travel and that type of
17 undercover meeting, but that you're safe. You know, that
18 you're able to articulate what's going on, you're able to, you
19 know, talk the talk, walk the walk, like I mentioned earlier.

20 So we're not going to throw anybody into anything
21 that's going to put them in any type of danger.

22 Q. And in fact, Marco Delgado himself says, Why walk into a
23 lion's den?

24 A. I don't recall.

25 Q. Okay. We haven't gotten there. It's just a little bit

1 down.

2 (Call played.)

3 BY MS. KANOF:

4 Q. There we go.

5 A. Exactly.

6 Q. And what is he referring to?

7 A. The same. You know, why go somewhere where you're going to
8 put yourself in danger? You're going to be outmanned, you
9 know, at that point.

10 (Call played.)

11 BY MS. KANOF:

12 Q. Okay. Back at the beginning of this part of the
13 conversation, when Paco is talking to Delgado in the middle of
14 page 44, he asks him if he would be willing to get in for the
15 part proportional to the commission that he would have taken.
16 I mean, 50 percent.

17 What commission is he talking about?

18 A. The commission of moving the money.

19 Q. Okay. And is 50 percent kind of a high commission or
20 how...

21 A. Extremely high. Exactly. I think they're probably talking
22 about maybe the actual commission was split. Maybe 50 went to
23 a certain group, and 50 went, and they would disburse it to the
24 members.

25 Q. So that wouldn't be 50 percent of the entire amount. It

1 would be 50 percent of what Mr. Delgado received?

2 A. Potentially, yes.

3 Q. Okay.

4 A. Because that's a large amount for my type of pickup.

5 Q. Okay. And Mr. Delgado responds, "That's because you were
6 not there, but it was in equal parts."

7 So it appears as though Mr. Delgado is in a meeting
8 that Paco was not at, correct?

9 A. Correct.

10 Q. Where they split up the money?

11 A. Correct. From the conversation, Mr. Delgado was present
12 during the meeting. And Paco had a representative there
13 basically, you know, on his behalf.

14 Q. Okay. And when basically Delgado responds, Let's see how
15 much A, B, C, and D and the one, in fact, who said that you
16 were a participant was Pete.

17 He said, Yes, here, the five.

18 Would that be the five co-conspirators who are
19 splitting the money?

20 A. Correct.

21 (Call played.)

22 BY MS. KANOF:

23 Q. Back before we go too much farther, on the beginning of
24 page 47, Mr. Delgado says, Okay. Then send them, if you want,
25 with tools.

1 What does tools mean, if you know?

2 A. I don't know.

3 (Call played.)

4 BY MS. KANOF:

5 Q. Okay. Paco refers to Mr. Delgado as the leader of us; is
6 that correct?

7 A. Correct.

8 Q. Is there a special connotation to being the leader?

9 A. Basically, he's the one that orchestrated this pickup. And
10 a lot of times he would have more to gain from it.

11 Q. And back on page 47 Paco tells him, "You are the smartest
12 amongst all of us and the one who knows the most about this."

13 A. Correct.

14 Q. Did you get that impression as well, that Mr. Delgado knew
15 the most about this transaction?

16 A. Yes. And that's the reason, when we first initiated the
17 investigation, we decided to use Mr. Delgado instead of, you
18 know, Mr. Pimentel. Because we saw that he was intimate with
19 these people, knew what was going on. He was manipulative. He
20 was able to talk to these people. So he would have been
21 perfect for us to use to infiltrate the organization.

22 (Call played.)

23 BY MS. KANOF:

24 Q. Okay. So now he's saying there's six people in the
25 conspiracy?

1 A. Correct.

2 Q. He's adding someone?

3 A. He's correcting Marco on the people who were involved.

4 (Call played.)

5 BY MS. KANOF:

6 Q. After your introduction into this organization, did you, in
7 fact, have a meeting?

8 A. Yes.

9 Q. Tell the jury how that came about.

10 A. Actually, in talking to the different co-conspirators in
11 this investigation, we were able to lure Isidro -- and I can't
12 recall the second gentleman's name -- up to McAllen, Texas, for
13 the purpose of talking to them about where we stood with the
14 seizure of the million dollars, if we could -- you know, if we
15 could just continue on with the ruse. And then -- but
16 specifically, to try to lure them into opening up more
17 contracts, where we could get involved with the contracts.

18 So they came up to meet us and see what we had to
19 offer.

20 Q. Did -- we're not putting them into evidence.

21 But did you have conversations with the
22 co-conspirators alone, without Mr. Delgado being participating
23 in the conversation?

24 A. Yes.

25 Q. Okay. And do you recall how many different individuals you

1 spoke with?

2 A. I spoke to Chuy, I spoke to Paco, and Lilian de la Concha.

3 Q. Okay. And between those three conversations you set up a
4 meeting in McAllen, Texas?

5 A. Correct.

6 Q. Let me just ask you.

7 The city of Laredo has come up in some questioning.
8 Was there ever a mention of the city of Laredo?

9 A. No. I think it -- it started somewhat by mistake, and it's
10 just -- kind of was a landslide. We never went to Laredo. We
11 never hit Laredo.

12 Q. Okay.

13 A. It was Atlanta, El Paso, and McAllen for the meeting.

14 Q. Did you travel to McAllen to meet with the co-conspirators?

15 A. Yes, ma'am.

16 Q. Were you with or without Mr. Delgado?

17 A. Without.

18 Q. Who was with you?

19 A. I had another UC agent with me.

20 Q. Another what?

21 A. Undercover agent.

22 Q. And who did you hold him out to be?

23 A. Just an associate.

24 Q. Is that required, or you were -- why were you doing that?

25 A. No, no. There's always strength in numbers. We weren't

1 worried about anything, but it's always best to have somebody
2 there with you.

3 Q. And where did you meet? Who do you meet with?

4 A. We meet with Isidro and with this other gentleman whose
5 name escapes me.

6 Q. Okay. And what was the nature of the meeting?

7 A. The nature of -- the purpose, once again, was to talk about
8 the million dollars that was seized, where supposedly the
9 process lied [sic] at that time, and to continue to try to see
10 if we could get other contracts, where we could infiltrate the
11 organization.

12 Q. Is it your understanding that Isidro is a central
13 individual in the organization?

14 A. He is basically the face, or the arm, for lack of a better
15 word, in the States for Chuy. He's able to come and go pretty
16 easily. So they used him to come up here and be the face for
17 the organization.

18 Q. In fact, he -- when you were provided with Isidro's phone
19 number, I believe it was a phone number in the United States?

20 A. Correct.

21 Q. Where did you meet in McAllen?

22 A. In a restaurant.

23 Q. Did you have other agents that were present in the
24 restaurant watching for your security and safety?

25 A. Yeah. We actually had Special Agent Tom Justice, the case

1 agent, there with me and another McAllen agent.

2 Q. What happened at that meeting?

3 A. Basically, we discussed the options where the ruse lied at
4 that time discussed how we would, you know, facilitate the
5 movement of the money if we were able to win another contract.

6 And basically, it was more of a type of feel --
7 feel-out for both groups, us as undercover, and them coming up
8 to talk to us.

9 Q. Okay. Did you know about -- or by the way, did it go
10 anywhere?

11 A. No, ma'am.

12 Q. Was that the only meeting that occurred?

13 A. Yes, ma'am.

14 Q. Did you try to go further?

15 A. Yes.

16 Q. What efforts did you take in order to try to infiltrate the
17 organization?

18 A. Well, we continued -- we continued several talks with --
19 with all the members of the organization. I -- you know,
20 several phone calls with them.

21 We talked large amounts of money being moved from the
22 United States, large amounts of money being moved from Europe.

23 Basically, it looked like we were almost there, about
24 to get a contract. Everything was going basically to plan.

25 And from one day to another it just ceased. I mean,

1 communication almost came to a complete stop.

2 Q. You have no idea why?

3 A. We speculated.

4 Q. Well, in your experience as an agent, is it uncommon that
5 all of a sudden things will stop?

6 A. No, not as long as everything is being fluid and moving
7 forward. If something gets thrown in, they throw a monkey
8 wrench into the equation, that usually stops, and it stops
9 quickly, kind of what happened here.

10 Q. Okay. Now, what's a telephone toll record?

11 A. A telephone toll record? It's a record that the telephone
12 provider, you know, registers in the system.

13 Q. I'm going to show you what's -- it hasn't been marked, but
14 it's going to be Government's Exhibit 85, and it's Defense
15 Exhibit 2.

16 A. Okay.

17 Q. Okay. And you recognize these as -- do you recognize this
18 as AT&T toll records?

19 A. It's not coming up yet.

20 MS. KANOF: Oh, Your Honor, can we publish?

21 THE WITNESS: Here it is. It just came up.

22 MS. KANOF: Oh, okay.

23 BY MS. KANOF:

24 Q. As AT&T toll records, correct?

25 A. Yes, ma'am.

1 Q. And they begin on July 9th of 2008, correct?

2 A. I cannot see the date.

3 Yes, ma'am.

4 Q. Okay. And turning to page 7 of the exhibit, there are
5 highlighted -- on page 7 of this document, there is highlighted
6 a call on the 16th of July of 2008.

7 A. Okay.

8 Q. And the number that is being called is 404-427-7179.

9 Whose phone was that?

10 A. That was my phone.

11 Q. Was that your actual government phone or your undercover
12 phone.

13 A. No, that was my government phone for the six years I was
14 there.

15 Q. Okay. And the -- I'll just tell you the originating number
16 is Mr. Delgado's cell phone.

17 A. Okay.

18 Q. His AT&T cell phone.

19 A. Okay.

20 Q. And it appears as though on July 16th of '08 there was a
21 conversation -- or excuse me.

22 The elapsed time period from the time that the cell
23 phone connected with the tower and the time that it terminated
24 with the tower was 11 minutes and 57 seconds, correct?

25 A. Correct.

1 Q. Did Mr. Delgado have your official government cell phone?

2 A. He did.

3 Q. And did he call you?

4 A. Yes.

5 Q. Between -- do you remember, by the way, when the McAllen
6 meet was?

7 A. I don't.

8 Q. Okay. Was it within -- between your conversations that
9 we've been listening to today that Mr. Delgado participated in,
10 was it months? Years?

11 A. Oh, no. No, no. No, it was just fairly quickly after
12 that. You know, within probably a couple of weeks.

13 Q. Okay. And how fast did it take for it to fizzle?

14 A. Pretty quickly.

15 Q. Okay. And after it fizzled, did you continue to have
16 communications with Mr. Delgado?

17 A. No.

18 Q. Did you call him?

19 A. No.

20 Q. Would he call you?

21 A. No.

22 Q. So now we're -- since September 14th of 2007, we're in July
23 of 2008. So about nine months later?

24 A. Okay.

25 Q. And during that nine-month period of time between your

1 McAllen meeting and the middle of July of 2008, did you have
2 communication with Mr. Delgado?

3 A. Not that I recall, no.

4 Q. Were you using him for any other reason?

5 A. No, ma'am.

6 Q. Did he come to Atlanta to talk to you?

7 A. No.

8 Q. Did you go to El Paso to talk to him?

9 A. No.

10 Q. Well, on July 16th of 2008, at 6:16 p.m., it appears as
11 though the two phones connected for 11 minutes and 57 seconds.

12 Did you talk to Mr. Delgado at that time?

13 A. I don't recall.

14 Q. If you had talked to him, would you have made a report?

15 A. If it was of substance, yes.

16 Q. Okay. And what would substance be?

17 A. Substance would be if he was giving us information that
18 would further our investigation, something that would actually
19 be of importance.

20 Q. Okay. So if Mr. Delgado called you and said, I've been
21 asked to pick up \$100,000 in two \$50,000 lots in Chicago, would
22 that have been of significance?

23 A. Absolutely.

24 Q. Okay. And would you have done something about it?

25 A. Yes, ma'am.

1 Q. Did he do that?

2 A. No.

3 Q. Okay. That you would remember?

4 A. Oh, of course. Yes.

5 Q. And is it possible it went to voice mail and he left a
6 message?

7 A. Yes, ma'am, very possible.

8 Q. Did there come a time when -- do you know who else's phone
9 number he had in Atlanta?

10 A. He had several of our phones.

11 Q. Okay. And you were all in the same financial group?

12 A. Yes, ma'am.

13 Q. Would you have discussed that kind of phone call with
14 someone else in the group?

15 A. Absolutely. Yes.

16 Q. Telling them that something was going to happen Chicago?

17 A. Correct.

18 Q. Okay. There's also -- but by this time, were you trying to
19 avoid Mr. Delgado?

20 A. Yes.

21 Q. Why?

22 A. Because the way that the investigation came to a quick end,
23 I personally speculated that he had compromised me.

24 Q. Is an individual that is cooperating with you permitted to
25 tell other people he's cooperating with you?

1 A. No.

2 Q. Okay. And if they do tell people that they're cooperating
3 with you, what happens?

4 A. Well, they -- they could actually be charged for
5 obstruction; deactivated, if they're actually signed on as
6 sources.

7 Q. Was Mr. Delgado actually signed on as a source?

8 A. I don't believe so.

9 Q. Okay. You actually entered into some kind of a contract,
10 correct?

11 A. Correct.

12 Q. But was he told that he should not tell anybody that he was
13 participating?

14 A. Absolutely.

15 Q. And did you tell him?

16 A. Yes.

17 Q. On the next day, the 17th of July, there appears to be a
18 call originating from his cell phone to your cell phone at
19 12:03 p.m. for 50 seconds.

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes.

23 Q. She's good, but I don't know if she knows how to spell --

24 A. I'm sorry.

25 Q. And would that indicate to you that any conversation

1 occurred?

2 A. No. It means that there was a connection made.

3 Q. Turning to page 9 of the exhibit, there's a -- on the
4 21st -- I'm sorry. That's not you.

5 On the 21st of July at 6:01 p.m., a call is placed
6 from Mr. Delgado's cell phone to your cell phone, and the
7 elapsed time is 3 minutes and 52 seconds again.

8 Did you receive -- did you actually talk to
9 Mr. Delgado on that day?

10 A. I don't recall.

11 Q. With regard to the next one at 6:08, just seven minutes
12 later, another call placed between the two phones for 1 minute
13 and 34 seconds.

14 A. I don't recall.

15 Q. Correct?

16 A. Yeah.

17 Q. Did you check your voice mail all the time?

18 A. Yes.

19 Q. Okay. And if a message had been left that they were going
20 to do something substantive, like tomorrow I'm going to pick
21 up -- or the day after tomorrow we're going to pick up
22 \$100,000, would you have made a report?

23 A. Absolutely.

24 Q. Did you make a report?

25 A. No.

1 Q. The next page of the -- and I'll do this kind of quickly.

2 The next page, the highlighted areas on the 22nd of
3 July for your phone for a minute and 18 seconds, that could
4 just be the connection time?

5 A. Correct.

6 Q. For a minute and one second at 2:31, again, a connection?

7 A. Correct. Correct.

8 Q. At 6:19 on the 22nd, the connection time is 9 minutes and
9 33 seconds?

10 A. Correct.

11 Q. Did you ever talk to Mr. Delgado about anything during this
12 time?

13 A. No.

14 Q. What were you doing during this time?

15 A. During this specific time?

16 Q. Yes.

17 A. I was in Atlanta.

18 Q. Were you working on anything in particular? Were you
19 working as an undercover, do you remember?

20 A. I don't remember exactly what I was doing this day.

21 Q. Okay. On that same -- on July 22nd at 6:33, another call,
22 a minute and two seconds. Did you participate in a
23 conversation?

24 A. No, ma'am.

25 Q. Okay. And the 7179 number -- I accidentally highlighted

1 the 5199. You recognize the 5199 as Tom Justice's number?

2 A. Yes, ma'am.

3 Q. But at this time he was already leaving for DC, correct?

4 A. Correct. Correct.

5 Q. And when you leave -- he was getting promoted and was
6 transferring -- do you basically stop talking to informants in
7 Atlanta, because now you're going to do something else in
8 Washington, D.C.?

9 A. Yeah. Basically, like when I left Atlanta, the sources
10 that I did have still in Atlanta activated, they were
11 transferred to another agent.

12 Q. Okay. At 9:21 a.m., for 2 minutes and 10 seconds, you
13 don't -- you didn't talk to him?

14 A. No, ma'am.

15 Q. At 9:59 for 50 seconds?

16 A. No, ma'am.

17 Q. Okay. And -- okay. And the next two are Mr. Justice's.

18 At -- okay. Now, we're talking the 23rd of July.

19 Are you now aware that on the 23rd of July victor
20 Pimentel picked up \$50,000?

21 A. Yes, ma'am.

22 Q. Okay. And that would have been something of concern to
23 you?

24 A. Yes. Definitely.

25 Q. On that date, at 10:48, the phones connect for 4 minutes

1 and 56 seconds.

2 Do you recall whether or not you received a voice mail
3 or you spoke to Mr. Delgado regarding a pickup in Chicago?

4 A. No, ma'am.

5 Q. Let me ask you.

6 In your experience as an undercover and as someone who
7 handles informants, is it unusual for individuals engaged in
8 criminal conduct to try to cover their tracks?

9 A. Absolutely. It's happened to me personally.

10 Q. Okay. Explain that.

11 A. I've had informants where, for example, when I was with the
12 task force in North Carolina, they would call me and find out
13 what we're doing, if we had anything going on, where we were
14 located. And meanwhile, going behind our back, they are
15 meeting another one of our informants to sell cocaine.

16 Right before they did this transaction they're calling
17 me, Hey, what's going on? I have some information for you, but
18 it's -- they would give this location way off from where they
19 were actually at.

20 And most of the time we would just blow them off. No,
21 no, we're busy. We're at this other location, just to
22 contin- -- just to, you know, kind of put them at ease, and
23 they would usually do the transaction.

24 We actually, in my career, we've arrested -- signed up
25 CIs, at least four of them, in a similar situation. And they

1 always call because they're afraid at the -- in the back of
2 their mind they're always thinking, Is it them? Can I trust
3 them? Where are they at? It's very common.

4 Q. So in other words, trying to find out if they can figure
5 out if you know what's going on?

6 A. Absolutely.

7 Q. Is it common for an informant to continue in illegal
8 conduct and not tell you about it?

9 A. Yes. Yes.

10 Q. It's very common, correct?

11 A. Yeah. And the day of this pickup, as you mentioned,
12 Atlanta was already aware. We were already aware that there
13 was something going on. So more than likely I was just letting
14 it go to voice mail, just ignore, ignore, ignore.

15 Q. Okay. By the 23rd of July at -- let's see. By the 23rd of
16 July at 11:23, were you aware that there had already been a
17 money pickup?

18 A. I was not aware that it had already taken place, but I knew
19 that Chicago was working on it.

20 Q. Okay. And so who informed you of that, Chicago or El Paso?

21 A. No. Actually, it was informed by -- I was informed by -- I
22 was informed by Jeff Walton.

23 Q. That would have been somebody in your own office?

24 A. Special Agent Jeff Walton, correct.

25 Q. Okay. And somebody had told him?

1 A. Yeah. Because he was taking over the case, since Tom was
2 leaving.

3 Q. Oh, that's right. It was going to be assigned to him,
4 correct?

5 A. Yes, ma'am. Yes, ma'am.

6 Q. Okay. And when -- when individuals who are -- who are
7 continuing, and that -- they also want to see if you're
8 available, correct?

9 A. Absolutely.

10 Q. Make sure you're not on surveillance on somewhere else.

11 A. Yes.

12 Q. Would that be fair to say?

13 A. Yes.

14 Q. But there is no question in your mind that you did not talk
15 to Mr. Delgado in July of 2008 regarding anything that was
16 occurring in Chicago; is that correct?

17 A. Absolutely not. I was still under the impression that he
18 had comprised me; and, therefore, putting me in jeopardy. So I
19 wanted nothing to do with him.

20 Q. Okay. Did he have your e-mail address?

21 A. No.

22 Q. Okay. When you go undercover, do you sometimes create
23 fictitious e-mail addresses?

24 A. Yes, ma'am.

25 Q. And did you have a fictitious e-mail address?

1 A. Yes.

2 Q. What -- what was your fictitious e-mail address, if you can
3 recall?

4 A. During that time?

5 Q. Well, first of all, let me ask you.

6 A. Yeah.

7 Q. Are there favorite providers for criminal activity? Do
8 drug dealers generally use certain providers?

9 A. Absolutely. One of the main e-mails I would use mainly,
10 with dealing with the Mexican organizations or Colombian
11 organizations, is Hotmail.

12 So I would also try to mimick what they do, just --
13 you know, you're just building that comfort level with them.

14 Q. So Hotmail is a favorite of the --

15 A. Yes.

16 Q. And what other IP user is a favorite?

17 A. Gmail.

18 Q. Hotmail and Gmail?

19 A. Yes.

20 Q. So did you use Hotmail and Gmail?

21 A. That was my primary two ISPs, yeah.

22 Q. Okay. And did you send Marco Delgado an e-mail in --

23 I'm going to show you what is Defense Exhibit
24 Number 1.

25 Did you receive -- first of all, did you receive an

1 e-mail from Marco Delgado?

2 Well, this e-mail doesn't have a date on it, correct?

3 A. No, ma'am.

4 Q. And you -- have you ever seen an e-mail that didn't have a
5 to, a from, regarding, and a date?

6 A. Only when they've been copied and pasted.

7 Q. Okay. And there's no time there as well?

8 A. Correct.

9 Q. But in your recollection, there's a response here,
10 allegedly, on August 3rd of 2008.

11 So let me ask you. You were aware of what happened in
12 Chicago in July, correct?

13 A. Yes, ma'am.

14 Q. And did you become aware that Mr. Delgado was involved?

15 A. Yes.

16 Q. And would that have affected your use of him as an
17 informant?

18 A. Absolutely.

19 Q. How would it have affected it?

20 A. He would be not used by us.

21 Q. Okay. But you wouldn't be surprised?

22 A. No.

23 Q. And this particular e-mail is in Spanish?

24 A. Yes, ma'am.

25 Q. Okay. Would it be common or uncommon for you to e-mail

1 Mr. Delgado in Spanish?

2 A. No, it would be in Spanish more than likely.

3 Q. Okay. And it purports to be an e-mail, except that it
4 doesn't have a header that says what, if you can just
5 translate.

6 A. The friend -- the female friend contacted him about a
7 consultation about future operations, and that -- she was
8 saying, there, you can see of it, four people. That they want
9 to know what could be done to initiate the jobs afterwards.

10 Q. Okay.

11 A. And that they couldn't see each other the following week in
12 Chicago.

13 It says, I ask you to inform me. Hope you're well.

14 Q. Okay. Especially if you met in Chicago, you would have
15 remembered this, correct?

16 A. Yes. Yes.

17 Q. Did you ever receive this e-mail?

18 A. No.

19 Q. Okay. And there purports to be a response from you, but
20 it's in English.

21 A. Correct.

22 Q. Okay. The other one was allegedly from Mr. Delgado in
23 Spanish.

24 And it says Rafa Solis at Bellsouth.net, correct?

25 A. Correct.

1 Q. You used Hotmail and Gmail?

2 A. Correct.

3 Q. Not Bellsouth?

4 A. Correct.

5 Q. Is one of the reasons you use Hotmail and Gmail also
6 because it's web based?

7 A. It's web based. It's a server. I wouldn't use -- and I
8 teach not to use Internet service providers because each -- we
9 don't know how savvy the person is, whether they're going to be
10 able to follow your IP to, you know, a server.

11 Q. Okay. Let's break this down a little bit.

12 First of all, you said you teach?

13 A. Yes, ma'am.

14 Q. What do you teach?

15 A. Undercover school.

16 Q. And where do you teach undercover?

17 A. At the Federal Law Enforcement Training Center.

18 Q. Okay. Thank you for not saying FLETC.

19 A. Yes, ma'am.

20 Q. And you teach -- okay. When they use an IP address like
21 Bellsouth, how does that make it easier for somebody to
22 basically figure out whether -- where you are and who you are?

23 A. You know, basically, we do it in an excess of caution.
24 Just you -- you never know what kind of contacts they have,
25 what kind of, you know, technology, what kind of, you know,

1 background they have, where they could easily figure out where
2 this IP is located at.

3 Even though our -- all our UC accounts are
4 backstopped, there's also still that little bit of unknown, so
5 we always try to, you know, use the big servers, use the big,
6 you know, Hotmail or Gmail.

7 Q. Okay. When I talked about web based, Hotmail and Gmail
8 are -- work differently, correct, as -- like IP addresses?

9 A. Yes. Because Hotmail and Gmail are primarily a
10 communication, you know, system for e-mail, for -- like Google
11 voice for communication.

12 Bellsouth is more an Internet service provider. So
13 that's actually the company giving you the service, and they
14 give you an auxillary e-mail attached to that account. So that
15 gives -- you know for us, it gives us that little facet that we
16 don't want people to be able to get to.

17 Q. Okay. So like if I like go to an Internet cafe at
18 Starbucks and I want to send an e-mail it -- first, I'd have to
19 get into Gmail, correct?

20 A. Correct.

21 Q. And then transmit, correct?

22 A. Correct.

23 Q. And that's a little bit harder for individuals who want to
24 find out about you to find out?

25 A. Absolutely. Because once you subpoena Gmail, it will just

1 show up that the originating IP was at this cafe. So at that
2 point we were's not worried about it.

3 Q. When -- do you ever -- do you ever remember communicating
4 with Mr. Delgado on e-mail?

5 A. I do. I do.

6 Q. Okay. And you'll see that this e-mail has on it -- the one
7 from him, allegedly, that this came from Delgado & Associates?

8 A. Yes, ma'am.

9 Q. Okay. And when you communicated with him, what -- did he
10 use his Delgado & Associates office e-mail or did he use his
11 AOL account, his personal account, if you can recall?

12 A. I don't recall.

13 Q. You don't remember? Okay.

14 In December of 2008 --

15 THE COURT: Ms. Kanof, we need to break for lunch.

16 So...

17 MS. KANOF: Okay.

18 THE COURT: Ladies and gentlemen, we'll be at lunch
19 for an hour and 15 minutes. So we'll reconvene at 1:40.

20 We'll be in recess until 1:40 in the afternoon.

21 (Recess taken; open court.)

22 THE COURT: Ms. Kanof, you may continue.

23 MS. KANOF: Yes.

24 BY MS. KANOF:

25 Q. Agent Ascencio, you understand you're still under oath?

1 A. Yes, ma'am.

2 Q. In -- later in 2008, in December of 2008, did there come a
3 time that you became involved with Mr. Delgado again?

4 A. Yes.

5 Q. Do you recall whether or not it was December 3rd of 2008?

6 A. That is correct.

7 Q. How did that happen?

8 A. Basically, I was informed that El Paso was trying to get
9 ahold of Mr. Delgado, and they were unable to. And they wanted
10 us to try to reach out and get ahold of him, because he
11 actually had what they described as a viable threat to his
12 life.

13 Q. What's a viable threat?

14 A. They actually had strong beliefs that he was in danger.

15 Q. Okay. So they reached out to you to reach out to him?

16 A. Correct.

17 Q. And were you able to connect with him?

18 A. Yes.

19 Q. And what happened next?

20 A. Basically, we -- I was talking to Mr. Delgado and I said,
21 You need to go to our office and see a particular agent. I
22 said, You need to get there as soon as possible.

23 After discussing it a few more times I gave him the
24 severity of what was going on and, This is serious. You need
25 to get over there.

1 And finally he agreed and went to our office here in
2 El Paso.

3 Q. And at some time were you included in a conference call
4 with El Paso and Mr. Delgado to discuss the threat?

5 A. Yes.

6 Q. Was that around 7:20 p.m. of December 3rd of 2008?

7 A. Yes, ma'am.

8 Q. And in the process of -- did you participate in that
9 conference call?

10 A. Yes, ma'am.

11 Q. Did you speak with Mr. Delgado as well?

12 A. Yes.

13 Q. And at the beginning of the conference call, was
14 Mr. Delgado advised of the threat?

15 A. Yes.

16 Q. What exactly did you tell -- or how was he advised? What
17 was he advised of?

18 A. Basically, what we advised him is just that El Paso had
19 information that they were looking for him for the money that
20 he owed that hadn't been paid yet.

21 Q. And did you specifically say that -- that they were
22 looking -- that the threat was because the drug trafficking
23 organization was owed approximately \$2,050,000?

24 A. Yes, ma'am.

25 Q. And how did he respond?

1 A. I think he was just in -- you know, in awe. He didn't know
2 what to expect, what to say.

3 Q. Did he say anything -- would it refresh your memory if you
4 saw your report?

5 A. Yes, it would.

6 Q. Okay.

7 A. I do recall him saying he was -- he was kind of in awe.

8 But he was just saying that all he owed was the \$1 million that
9 was seized.

10 Q. Okay. So he responded that he only owed \$1 million?

11 A. Correct.

12 Q. But did he say that he owed the whole million dollars or
13 just part of it?

14 A. Just his share. His share of the contract.

15 Q. And what was his share, if you recall?

16 A. Whatever was broken up between the group. I believe he
17 said six.

18 Q. Okay. And do you recall him saying \$200,000?

19 A. Yes, ma'am.

20 Q. Did he contest the fact that you called it a drug
21 trafficking organization?

22 A. No, ma'am.

23 Q. And further on in the conversation, did Mr. Delgado start
24 talking about Ms. de la Concha?

25 A. Yes.

1 Q. What did he say?

2 A. Basically, that -- if I recall correctly, that he was going
3 to talk to her, or that he was worried about it.

4 Q. Okay. And did he say that he was no longer romantically
5 involved with her?

6 A. I don't recall.

7 Q. Would it help you to refresh your memory if you saw the
8 report that you wrote back in 2008 regarding this?

9 A. Yes, ma'am.

10 Q. Or the report that ICE wrote?

11 A. Yes, ma'am.

12 MS. KANOF: Approach the witness, Your Honor?

13 THE COURT: You may.

14 (Witness handed report.)

15 THE WITNESS: Thank you.

16 BY MS. KANOF:

17 Q. On page 3, with regard to what he said about Lilian de la
18 Concha, starting in the middle of page, if you could refresh
19 your memory, please.

20 A. Yeah. Basically, he stated that he stopped seeing Lilian
21 de la Concha on a romantic basis.

22 Q. Okay. And go ahead and read the paragraph to yourself.

23 A. (Witness complies.)

24 Q. Let me know when you are finished.

25 A. Okay.

1 Q. Does that refresh your memory?

2 A. Yes, ma'am.

3 Q. Okay. What else did he say about Lilian de la Concha?

4 A. Basically, that she had been trying to get ahold of him,
5 was sending him -- you know, sending e-mails, trying to call
6 him, and actually started calling his ex-wife and girlfriends.

7 Q. And did he tell you that -- okay. He was actually
8 calling -- or Lilian de la Concha was actually calling his
9 ex-wife and girlfriend; is that correct?

10 A. Correct.

11 Q. And throughout the conversation, did he persist in the fact
12 that he only owed \$200,000?

13 A. Yes, ma'am.

14 Q. And did he tell you whether or not he had paid back part of
15 it?

16 A. I don't recall.

17 Q. Did he -- in the -- would it refresh your memory to read
18 the last paragraph of your report?

19 A. Yes, of course.

20 Q. I know it's been a long time ago.

21 A. Yes, ma'am.

22 Q. Go ahead and read that whole paragraph, including -- it
23 ends, I guess, on the next page.

24 A. Well, basically, it just states that he still owed the
25 \$200,000, as some of the other parties had already paid their

1 part.

2 Q. So he was aware of the fact that the other parties had paid
3 their part?

4 A. Yes, ma'am.

5 Q. And he indicated to you that he was the only one that had
6 not paid?

7 A. Correct.

8 Q. Did you talk -- did -- in this conversation, was he asked
9 questions about the Chicago \$100,000 deal?

10 A. Absolutely. Actually, right before we placed the phone
11 call to Mr. Delgado, we decided to try and question him about
12 it to see if we would catch him, you know, in a lie, or what
13 his response would be to the actual Chicago pickup.

14 Q. Agents are always looking to get information from
15 individuals, correct?

16 A. Absolutely.

17 Q. And so you had -- you, together, planned to bring up
18 Chicago; is that correct?

19 A. Yes, ma'am.

20 Q. And when he was asked about the \$50,000 Chicago pickup,
21 what was the first thing he said?

22 A. That he knew nothing of it.

23 Q. Okay. And then after continued questioning about the money
24 in Chicago, did he change his story?

25 A. Yes. Once we were, you know, pushing him on the topic he

1 said yes, that Lilian de la Concha had arranged the money
2 pickup in Chicago.

3 Q. And did he say anything about other deals?

4 A. No. He just said that he arranged this one and did not
5 notify ICE or us.

6 Q. He actually said he -- he arranged the Chicago deal and did
7 not notify ICE?

8 A. Correct.

9 Q. Okay. And -- but did he -- did he claim he didn't know
10 about owing, other than his \$2,000 [sic], to the drug
11 trafficking organization?

12 A. Correct.

13 Q. Okay. Is that the end of your participation in that
14 particular call?

15 A. Yes, ma'am.

16 Q. Do you know whether or not, after you hung up the phone,
17 ICE El Paso continued to talk to him?

18 A. I knew he was at the ICE El Paso office. I'm not sure
19 what -- what took place.

20 Q. And did you ever hear from Mr. Delgado again?

21 A. No.

22 MS. KANOF: Pass the witness.

23 THE COURT: Mr. Velarde or Mr. Esper?

24 MR. VELARDE: Yes, Thank you.

25

CROSS-EXAMINATION

BY MR. VELARDE:

Q. Agent Ascencio, good afternoon.

A. Good afternoon, sir.

Q. Agent, let me begin -- I'm not going to address your background anymore. Enough has been said about that.

Let me address -- hone in on my questions with regards to the events --

A. Yes, sir.

Q. -- that happened on September 5th of 2007.

A. Okay.

Q. As I recall your testimony, you said that you were asked to participate in this seizure by Brian Ramsey?

A. Yes, sir.

Q. Okay. Was Brian Ramsey the case agent or was it --

A. No, sir. Brian Ramsey was our group supervisor.

Q. And the case agent in the investigation dating back to then?

A. The initial one was Tom Justice.

Q. Okay. Were you ever the case agent in this case?

A. No, sir.

Q. Okay. And you testified that you made -- you went to the substa- -- you went to the station there at Carroll County?

A. Yes, sir.

Q. And you got to observe Victor Pimentel?

1 A. Yes, sir.

2 Q. Did you interview Victor Pimentel?

3 A. Not for the interview. I did speak to him briefly.

4 Q. Okay. Now you learned, from what Victor Pimentel was
5 saying, that he was willing to cooperate; is that correct?

6 A. Yes, sir.

7 Q. And as part of his cooperation, he agreed to accompany the
8 agents to El Paso?

9 A. Yes, sir.

10 Q. And to make the delivery to Marco Delgado?

11 A. Correct.

12 Q. You learned all of that?

13 A. Yes, sir.

14 Q. And I also -- I also recall that you said you did not
15 accompany that group of agents that came with Mr. Pimentel.

16 A. That is correct.

17 Q. As a matter of fact, you didn't come to El Paso at all.

18 A. No, sir.

19 Q. Okay. That brings me, then, to the next series of
20 questions.

21 This morning you testified at length about Exhibit 50,
22 a conversation that Mr. Delgado had with Lilian de la Concha;
23 51, an exhibit regarding a conversation he had with Chuy; 52,
24 the one he had with Chilo, Isidro?

25 A. Yes, sir.

1 Q. 53, with Chuy; 54, with Lilian; and 55, with Lilian.

2 There were one, two, three, four, five, six
3 conversations that took place between September the 9th and
4 September the 10th?

5 A. Yes, sir.

6 Q. You weren't here in El Paso?

7 A. No, sir. He was in Atlanta with me.

8 Q. No. He was in Atlanta with you?

9 A. Yes, sir.

10 Q. When did he go to Atlanta?

11 A. After the seizure.

12 Q. Which seizure? We've had a number of seizures.

13 A. After the initial seizure in Atlanta, once they came to
14 El Paso to do the controlled delivery?

15 Q. Yes, sir.

16 A. After the seizures here in El Paso, he flew to Atlanta.

17 Q. Okay. I'm going to visit with you, because the time is
18 very, very important.

19 A. Yes, sir.

20 Q. Okay?

21 The first -- the delivery was made here in El Paso and
22 seized on September the 7th.

23 A. Yes, sir.

24 Q. Okay. Then the following day, on September the 8th, was
25 the other seizure --

1 A. Yes, sir.

2 Q. -- here in El Paso.

3 A. Yes, sir.

4 Q. And you were not here on those dates?

5 A. No, sir.

6 Q. Okay.

7 On those dates, when Mr. Delgado was being interviewed
8 by agents of your agency, as well as local agents, Mr. Delgado
9 was placing phone calls.

10 A. Yes, sir.

11 Q. Did you know that?

12 A. No, sir.

13 Q. You didn't know that?

14 A. Not initially, no, sir.

15 Q. Okay. Well, you need to know that the conversation to
16 Lilian -- the first one, Exhibit 50, relates to a conversation
17 that was made on September the 9th.

18 A. Yes, sir.

19 Q. He was here in El Paso.

20 A. Okay. So --

21 MS. KANOF: I would object, Your Honor. Is he asking
22 a question or is he telling that he was -- he's testifying that
23 he was here in El Paso, and I don't...

24 THE COURT: I'll sustain the objection.

25

1 BY MR. VELARDE:

2 Q. Mr. Ascencio --

3 A. Yes, sir.

4 Q. -- I've already given you two dates, September the 7th and
5 September the 9th, as the dates of the seizures.

6 A. Yes, sir.

7 Q. The first phone call to --

8 MS. KANOF: Objection, Your Honor. September the 7th
9 and September the 8th.

10 BY MR. VELARDE:

11 Q. September the 7th and 8th. Okay?

12 MS. KANOF: You just said the 9th.

13 A. Okay.

14 BY MR. VELARDE:

15 Q. Now, on September the 9th -- if you will please refer back
16 to Exhibit Number 50.

17 A. Yes, sir.

18 I don't have Exhibit 50.

19 THE COURT: 50 or 50A?

20 MR. VELARDE: 50.

21 BY MR. VELARDE:

22 Q. 50. And 50A is the transcript.

23 A. Yes, sir.

24 Q. Is there a 50A there?

25 A. No, sir.

1 MR. VELARDE: May I approach the witness, Your Honor?

2 THE COURT: You may approach.

3 THE WITNESS: Thank you, sir.

4 MR. VELARDE: Yes, sir.

5 BY MR. VELARDE:

6 Q. The face cover of this transcript reflects that this
7 transcript, or this conversation, took place on September the
8 9th at 10:19 a.m.

9 A. Yes, sir.

10 Q. Were you in El Paso?

11 A. No, sir.

12 Q. Okay. There's nothing here to indicate that this
13 conversation took place in Atlanta, because it didn't take
14 place in Atlanta, correct?

15 A. Correct.

16 Q. So you weren't here?

17 A. I was not in El Paso, no.

18 Q. You were not privy to anything that was discussed in this
19 conversation, correct?

20 A. Not during the conversation, just after the fact.

21 Q. After the fact?

22 A. Yes, sir.

23 Q. As a matter of fact, in the -- in this transcript he starts
24 out by talking to Lilian de la Concha and saying that the
25 accountant, Pedro, dropped in on us yesterday.

1 A. Yes, sir.

2 Q. Meaning September the 8th, the same day he got arrested
3 here in El Paso?

4 A. Yes, sir.

5 Q. So earlier, when you were testifying about whether or not
6 you had told Marco Delgado what to say, you said, I never said
7 that.

8 A. Correct.

9 Q. Okay. Well, the fact is you were not participating in
10 this?

11 A. Correct.

12 Q. Okay.

13 Who was participating with Mr. Delgado when this
14 conversation took place, if you know?

15 A. That would be a question for the case agent.

16 Q. Okay. But you were not participating with this?

17 A. I was not in El Paso, sir, no.

18 Q. Now, there is reference in this same transcript at page
19 13 -- if you would, please?

20 A. Of course. Okay.

21 Q. That portion that starts out with, Pedro is an idiot. I'm
22 telling you just like that, on Friday it occurred to him that
23 he should come over here. He is an idiot. I had him in
24 Mexico, and then one of us is going with you. I told him,
25 Listen, Buddy. You guys are people and have -- literally,

1 there are six plazas, right? And Pedro is not a person. Do I
2 explain myself, in any event?

3 A. Correct.

4 Q. You talked about plaza as meaning what?

5 A. Plaza is a group. It's a group of people. Six facets that
6 got involved in this.

7 Q. Mr. Ascencio --

8 A. Yes, sir.

9 Q. -- were you aware that Pedro and Chilo were en route to
10 Mexico by car?

11 A. No, sir.

12 Q. Okay. Were you aware that the agents here in El Paso
13 instructed Mr. Delgado to call them to tell them to come to
14 El Paso because he had a plane with six seats in it?

15 A. No, sir.

16 Q. You weren't aware of that?

17 A. No.

18 Q. The same goes to the conversations that took place that
19 same day with Chuy and Chilo and Chuy again?

20 A. Correct.

21 Q. On September 9th?

22 A. Yes, sir.

23 Q. You were not here?

24 A. I was not in El Paso, no.

25 Q. So that means that you weren't a witness to what was being

1 discussed or anything, correct?

2 A. Correct.

3 Q. And then let me take it forward to the following day,
4 September the 10th.

5 A. Yes, sir.

6 Q. There were two conversations with Lilian on that same day.

7 A. Yes, sir.

8 Q. Again, you weren't here in El Paso.

9 A. The conversation where you actually see me a part of --

10 Q. Sir, you were not in El Paso when those recordings were
11 being recorded.

12 A. Correct. The conversation you see, where you actually have
13 me in the transcripts whenever we were in Atlanta prior to
14 that, I was not in El Paso.

15 Q. Okay. So your testimony about what was discussed on those
16 occasions, why did you testify to being here in El Paso, then?

17 A. I did not testify to being here in El Paso. I testified to
18 the content of the calls and my understanding, due to my
19 experience.

20 Q. Okay. Well, when you were engaged with Mr. Delgado in
21 making phone calls to the different people, Chuy and Paco --

22 A. Yes, sir.

23 Q. -- before -- before he initiated those phone calls, you
24 debriefed him in Atlanta?

25 A. He was debriefed by us at the office, yes, sir.

1 Q. When I say "you," not you only, but all of you in Atlanta.

2 A. Yes, sir. Yes, sir.

3 Q. And that debrief took place over a period of hours?

4 A. I would imagine.

5 Q. Okay. And prior to him debriefing with Atlanta, he was
6 debriefed here in El Paso by Tom Justice and the people here in
7 El Paso, correct?

8 A. I don't know.

9 Q. Well, let me ask you this.

10 Before you started making a telephone call, a
11 consensually-monitored recorded phone call --

12 A. Yes, sir.

13 Q. -- you make it a point to visit with the person that's
14 going to be participating, and you basically give them
15 instructions?

16 A. Yes. To a point, correct.

17 Q. So you gave him a script?

18 A. Yes.

19 Q. Okay. When you had Mr. Delgado calling up Chuy and then
20 Paco, before he said, I've got to leave, you made sure that you
21 told Mr. Delgado, This is what I want you to ask about.

22 Correct?

23 A. Absolutely. What we do is I take the information that I
24 get from the agents in El Paso, our agents in Atlanta, figure
25 out what -- what the best way -- best angle of approaching

1 this. And we've tried to make it as concise without going
2 overboard. We -- like I say, we don't -- we don't spoonfeed
3 them anything. We just say, Hit these highlights. This is
4 what we need.

5 Q. Hit the highlights. That's exactly what I'm driving at.

6 A. Correct.

7 Q. All this sinister talk that you were interpreting about
8 what he was saying here in El Paso was part of that script that
9 he was given?

10 A. No.

11 Q. How do you -- how can you attest to that?

12 A. Because I didn't have knowledge of it. I just told him
13 what we had in Atlanta, that we needed to go ahead and try to
14 infiltrate the organization. That, you know, we had this ruse
15 going on, which he understood. We talked about the vehicle.

16 Q. Agent Ascencio --

17 A. Yes, sir.

18 Q. -- you testified about the meaning of the conversation that
19 Mr. Delgado was carrying on with all these folks on September
20 the 9th and September the 10th?

21 A. Correct, based on my training and experience.

22 Q. I understand. Based on your training. Okay?

23 And you passed judgment over what was being talked
24 about based on your training?

25 A. And experience, because I've seen it --

1 Q. I understand that.

2 A. -- personally and heard it. Yes, sir.

3 Q. I understand that. But will you agree with me that that
4 conversation was staged, that that conversation took place
5 after Mr. Delgado was told, We want you to hit on these
6 highlights?

7 A. Certain highlights, not all of them.

8 Q. Okay. So if Mr. Delgado is talking to all these people and
9 sounding sinister, certainly you cannot attribute that to the
10 fact that he was being sinister, correct?

11 A. No, because we can only teach so much. We can only
12 emphasize so much. It always falls back on the person, on what
13 they know, the actual facts, what they've lived, what they've
14 experienced. We cannot personally portray that, or we can't
15 instruct them.

16 But as somebody -- some -- somebody that we look at
17 and assess whether they're going to be a good person to
18 cooperate or not.

19 In this -- in this instance he was, because he already
20 had the background, the knowledge, and the intimate knowledge
21 of it. So basically, we gave him a little bit, highlights, and
22 he went on his own.

23 And like I testified earlier, a lot of times we would
24 actually have to tell him, Tone it down. Don't go overboard.
25 You know, just keep it short.

1 Q. Agent, I don't want to talk about the other cases. I want
2 to talk about this one. Okay?

3 A. Yes, sir.

4 Q. So bear with me.

5 A. Talking about one, yes, sir.

6 Q. Okay. The fact is, you don't know what the agents here in
7 El Paso told Mr. Delgado to tell these folks that he was
8 recording.

9 A. Correct. I was not privy to that.

10 Q. And so whatever -- whatever discussion took place, you
11 cannot tell these members of the jury that that was all -- that
12 was all sinister, that that was his doing?

13 A. No. Because if we gave -- give these highlights, it's
14 based on a factual instance, something that took place.

15 Whether it sounds sinister or not, whether it came
16 directly from him or from us as a highlight, it's still
17 something that took place, that's taken place, that we're
18 basically exploiting at that point -- at the moment.

19 Q. You were asked about the dogs hitting on the pieces of
20 luggage containing the money.

21 A. I was --

22 Q. You were specifically asked, Did you tell him that?

23 And you said, No, I never told him that.

24 A. Correct. I didn't, no, sir.

25 Q. You weren't there present to begin with. But...

1 A. That's why I didn't tell him.

2 Q. You know that Mr. Delgado was coached to go to DPS and
3 stage a little drama scene there so that he could obtain the
4 release of Pedro Mendoza-Meneses, or Meneses-Mendoza, and
5 Isidro Vega-Rubio?

6 A. Yes, sir. I was not aware of that.

7 Q. You were not aware of that?

8 A. No, sir.

9 Q. Okay. Well, if Mr. Delgado is under arrest and he goes to
10 DPS, certainly that has to be staged, correct?

11 A. If he's cooperating, correct.

12 Q. And he was?

13 A. Yes, sir.

14 Q. Okay. He was -- in other words, when -- here in El Paso,
15 starting here in El Paso. And then we'll touch on those
16 conversations that you handled in Atlanta.

17 A. Yes, sir.

18 Q. But here in El Paso, based on your experience, you know
19 that he was coached on what to tell these people, so that they
20 could -- he could lure them into talking about drug
21 trafficking?

22 A. Based on my experience, I know that he was instructed on
23 certain highlights, correct.

24 Q. So just to finish up this line of inquiry, it's safe to say
25 that whatever Mr. Delgado is heard saying or talking about in

1 those conversations on September the 9th to September the 10th,
2 it is what it is, as the saying goes?

3 A. What he's saying is the facts, because this had to -- the
4 ruse that we're building has to be based on fact. If you don't
5 base it on fact it will be divulged, and basically the
6 investigation would have ended right then and there.

7 Q. And then subsequent to that, a couple of days later,
8 Mr. Delgado goes to Atlanta?

9 A. Yes, sir.

10 Q. The first phone call from Atlanta, to Chuy first, and then
11 Paco and then later on a whole bunch of other people --

12 A. Okay.

13 Q. -- started out on September the 14th?

14 A. Yes, sir.

15 Q. And you've already told me that before he got on that
16 phone, again you debriefed him, and you gave him the highlights
17 that he was supposed to touch upon?

18 A. Correct.

19 Q. So again, whatever he was talking about, as sinister
20 sounding as it sounded, that was part of the coaching that he
21 was subjected to?

22 A. No, sir. Once again, that was not. We gave him certain
23 highlights to try to introduce our operation into the
24 organization.

25 The sinister part of it as you described, Counselor,

1 it was already there. It's factual. That's what took place,
2 so we exploited it.

3 Q. But the reality is that he had already been coached here in
4 El Paso.

5 A. To what extent, I don't know.

6 Q. And you don't know that?

7 A. No, sir.

8 Q. Okay. Now, you started in Atlanta on September the 14th,
9 when you became acquainted with Mr. Delgado?

10 A. Yes, sir.

11 Q. You started a series of phone calls?

12 A. Yes, sir.

13 Q. Okay. On 9-14 you placed approximately seven calls. He
14 either called or they called you, right?

15 A. Okay.

16 Q. And by the second call you were already being introduced to
17 Paco?

18 A. Yes, sir.

19 Q. The first call went to Chuy, right?

20 A. Yes, sir. Correct.

21 Q. And then you talked to Paco, and we've heard that
22 discussion here?

23 A. Yes, sir.

24 Q. And then Mr. Delgado was taken out of the loop?

25 A. Yes. Which is ultimately our goal, to use him to a point

1 and try to get him out of the investigation.

2 Q. There were approximately, by my count, about 21 phone
3 calls. Some of them didn't -- sometimes it wouldn't pick up,
4 so no conversation took place. But there were approximately 21
5 phone calls between September the 14th --

6 MS. KANOF: Objection, Your Honor. Is he testifying
7 or is he asking?

8 MR. VELARDE: I'm going to ask.

9 THE COURT: Ask the question, then.

10 BY MR. VELARDE:

11 Q. Did you place those phone calls, approximately 21 phone
12 calls, between September the 14th and October 1st?

13 A. I know I talked to him several times during the initial
14 time he was in Atlanta. I don't recall af- -- you know, what
15 length after that. It wasn't very long after that.

16 Q. No. I'm talking about the conversations, just the
17 conversations with the folks in Mexico.

18 A. Oh, the recorded ones?

19 Q. The recorded ones.

20 A. Yes, sir.

21 Q. So you recorded conversations starting on September 14th?

22 A. Yes, sir.

23 Q. And it ended when? Like October?

24 A. I can't recall, to be honest with you.

25 Q. You wrote a report, correct?

1 A. Yes, sir.

2 Q. And in this five-, six-page report, you summarized all the
3 different conversations you had with the people?

4 A. Right. Just a quick synopsis, correct.

5 Q. You will agree with me that there is no reference, per se,
6 in this report that these people in Mexico told you, That money
7 belongs to the cartel?

8 A. Based on the conversations I had with them, as I recall
9 them, yes. They -- they were -- they feared for their life.
10 They feared for what was going on. And based on my experience,
11 they're not dealing with somebody that --

12 Q. Sir, my question is very cl- - very specific. Did they
13 specifically -- specifically -- tell you, That money belongs to
14 the cartel?

15 A. Sir, once again, I wrote a synopsis of the calls. But
16 based on the synopsis, as you see, and based on the
17 recollection I have of the actual phone calls I made with them,
18 they were fully aware that this money belonged to somebody they
19 feared that was involved in drug trafficking.

20 Q. Mr. Ascencio, I'm not asking for your interpretation of
21 what they were talking about.

22 I'm asking you whether or not they specifically told
23 you, This money belongs to a cartel.

24 Yes or no?

25 A. Your Honor --

1 THE COURT: No, just answer the question.

2 BY MR. VELARDE:

3 Q. Yes or no. Did they tell you, This money belongs to the
4 cartel? Yes or no?

5 A. No. But --

6 Q. Thank you.

7 THE COURT: You've answered the question.

8 BY MR. VELARDE:

9 Q. Thank you.

10 Now, there was a subsequent meeting that took place in
11 McAllen?

12 A. Correct.

13 Q. And you were present there with Pedro Mendoza-Meneses?

14 A. Yes, sir.

15 Q. Who did you meet with?

16 A. I met with Isidro and I believe --

17 Q. Chilo and Pedro?

18 A. Yes, sir.

19 Q. That conversation was not recorded?

20 A. It was.

21 Q. It was recorded?

22 A. If I recall correctly, yes, sir.

23 MR. VELARDE: May I visit with counsel, Your Honor?

24 THE COURT: You may.

25 (Attorneys conferring.)

1 BY MR. VELARDE:

2 Q. Agent Ascencio, I'd like to -- I'd like to ask you --

3 A. Of course.

4 Q. -- when was the last time that you saw a recording of the
5 meeting in McAllen on October 10th?

6 A. Sir, to be honest with you, I don't think I've ever seen
7 it. And the only reason I'm saying that it was is because I
8 don't think I would have done the undercover without it --
9 without myself being wired.

10 (Attorneys conferring.)

11 BY MR. VELARDE:

12 Q. Agent Ascencio, if no recording was produced, then you'd
13 be -- you'd be in error that a recording was actually made?

14 A. Sir, like I -- like I testified, I would have pushed to
15 have the actual meeting recorded for my safety, being the
16 undercover.

17 But once again, like I said earlier, I'm a -- I'm a
18 tech agent also. I'm unaware of if there's any technical
19 issues, why there's no recording.

20 But me not remembering the exact time, date, just
21 based on what I would normally do, I would -- I would push to
22 have the call recorded for my safety. But outside of that,
23 whatever -- because we were in McAllen. We were not in our
24 service, so it was their equipment.

25 Q. After you identified all the five parties that were

1 identified in these telephone conversations to Paco and Chuy,
2 starting with Paco, Chuy, Chilo, Lilian, and somebody else, did
3 you put out an all-point request to stop these folks if they
4 ever came back?

5 A. That would be a question for the case agent.

6 Q. For the case agent?

7 A. Yes, sir.

8 Q. Okay. You didn't do anything?

9 A. No, sir. I was not involved in that.

10 Q. You were asked shortly after lunch about a meeting -- no,
11 about a conference call that took place on December the 3rd.

12 A. Yes, sir.

13 Q. Was that conversation -- was that telephone conversation
14 recorded?

15 A. I don't believe so.

16 Q. Sir?

17 A. I don't believe so, no.

18 Q. Now, you testified that when Mr. Delgado was initially
19 asked -- was initially told about the hit, that he was -- he
20 did not know what to say and that he was baffled.

21 A. Basically, I testified that he -- I had to tell him over
22 and over. And it goes back to the history we had. Any time I
23 would talk to him he would go around in circles and just talk
24 my ear off about, really, nothing and everything, and me trying
25 to convey to him the importance that he needed to, one, be

1 quiet, listen to me, get to our office, because there's a
2 viable threat. After several seconds, he finally, you know,
3 agreed to it and went to our office.

4 Q. But again, you weren't there?

5 A. No. I was in Atlanta.

6 Q. There's been a lot of questions regarding the toll records.
7 And based on your testimony, there was a phone call placed on
8 July the 6th, July the 17th. There were four more calls placed
9 on July 22nd.

10 MS. KANOF: Objection, Your Honor. He didn't testify
11 to that. I asked him about --

12 THE COURT: I'll sustain the objection.

13 MR. VELARDE: Okay. Can you please pull up Exhibit
14 Number 85?

15 MS. KANOF: This is not the exact exhibit. This is my
16 copy with my highlighting on it. But I'm sure -- I don't mind.

17 THE COURT: It's not 85 -- well...

18 MS. KANOF: It hasn't been admitted as 85. It's
19 Defendant's Exhibit Number 2.

20 MR. VELARDE: Exhibit Number 2.

21 MS. KANOF: And if he needs to use my copy, I'm more
22 than happy to loan it to him.

23 MR. VELARDE: May I approach this witness, Your Honor?

24 THE COURT: Why?

25 MR. VELARDE: So he can consult this record.

1 THE COURT: Well, can you show him -- you can show him
2 from there.

3 BY MR. VELARDE:

4 Q. Can you see that on your screen?

5 A. No, sir.

6 I got it, sir.

7 Q. Pardon?

8 A. Yes, sir, I got it.

9 Q. Okay. You see the two highlighted?

10 A. Yes, sir. July 16th, 2008.

11 Q. That's correct?

12 A. Correct.

13 Q. So there was one on the 16th and one on the 17th?

14 A. Yes, sir.

15 Q. And that's your phone number, correct?

16 A. Yes, sir. That's my old phone number in Atlanta.

17 Q. Is that your direct office number or is that the general
18 office number?

19 A. No, sir. That's my cell phone.

20 Q. That's your cell phone?

21 A. Yes, sir.

22 Q. Okay. Now if we go to page 9, can you see that?

23 A. Yes, sir.

24 Q. Again, there's two more phone calls?

25 A. Correct.

1 Q. One lasted 3 minutes and 52 seconds. And the other one?

2 A. A minute and 34 seconds. Yes, sir.

3 Q. And then on the following day, on the 22nd, would you mind
4 telling me how many phone calls are recorded to this same phone
5 number?

6 A. There's one, two --

7 Q. On the 22nd.

8 MS. KANOF: Your Honor, I just wanted to advise that
9 that's my highlighting. And both his number and Tom Justice's
10 numbers are highlighted, so it would be a mistake to count the
11 highlights. He would have to look at which numbers are his.

12 BY MR. VELARDE:

13 Q. Well, I'm looking at --

14 A. 7179.

15 Q. I stand corrected, because your phone number -- let me go
16 back to page 7.

17 A. Yes, sir.

18 Q. This is your phone number, correct?

19 A. 7179. Yes, sir.

20 Q. Okay. Now on the following day, there's another series of
21 telephone calls on the 22nd to a dif- -- to 7179?

22 A. Yes, sir.

23 Q. Is that still your number?

24 A. Yes, sir.

25 Q. Okay. So on the 22nd, how many times is your number --

1 does your number appear?

2 A. Four.

3 Q. Okay. And the phone calls range from a minute 18 seconds
4 to a minute -- one 9 minutes and 33 seconds, and again one
5 minute.

6 A. Correct.

7 Q. Okay. Now, if you look further down --

8 A. Yes, sir.

9 Q. -- on July 23rd, there's more phone calls coming in at 9:21
10 in the morning. Was that the day of the Chicago incident?

11 A. Yes, sir. Correct.

12 Q. Okay. That took place sometime in the late morning hours?

13 A. I'm unaware.

14 Q. You're not aware?

15 A. Yes, sir.

16 Q. Are you on the same time zone in Chicago? You're Eastern
17 Standard Time?

18 A. Correct.

19 Q. Okay.

20 A. I believe they are, yes.

21 Q. You believe what?

22 A. Chicago is Eastern Standard, right?

23 Q. Eastern?

24 A. Yes, sir.

25 Q. Not Central?

1 A. No, I don't believe so.

2 Q. Okay. We'll get to that.

3 In any event, there's -- on the 23rd, starting at
4 9:21, 9:59, 10:01, and 10:02, there's four phone calls right
5 there?

6 A. Yes, sir.

7 Q. And of course the time is anywhere from 2 minutes 10
8 seconds to 38 seconds?

9 A. Correct.

10 Q. Okay. And your testimony was that you never received those
11 phone calls.

12 A. No. My testimony was I didn't ever talk to him.

13 Q. Oh. You never talked to him?

14 A. No, sir.

15 Q. Okay. And so can you explain why a phone call would last 3
16 minutes 52 seconds, 9 minutes 33 seconds, and you wouldn't talk
17 to him?

18 A. No. A phone call could last, you know, whatever the length
19 of the actual voice mail is, plus the time that it takes for
20 the handshake to take place between the cell towers and phones.
21 It could be a substantial amount.

22 Mainly Mr. Delgado, as I've mentioned earlier,
23 testified, he would leave these long ranting voice mails.

24 Q. But you can't testify whether or not those were actual
25 voice mails?

1 A. Correct.

2 Q. So you won't dispute the fact that those records indicate
3 that your phone was called?

4 A. No, no. I had a chance to review the records. They are
5 all outgoing calls to my phone.

6 Q. And that the calls lasted as is reflected in that --

7 A. That is correct, sir. Yes, sir.

8 Q. On December the 3rd, when El Paso contacted you --

9 A. Uh-huh.

10 Q. -- El Paso made you aware that there had been a report made
11 to their office, correct?

12 A. Correct.

13 Q. Regarding Mr. Delgado?

14 A. Correct.

15 Q. And were you made aware of the nature, the background of
16 this information that was received by them?

17 A. No. The actual background, I was not privy to it until
18 actually I came here for the trial.

19 Q. Okay. So if Lilian de la Concha came to El Paso to check
20 out Mr. Delgado's residence, place of work and what have you,
21 obviously, she came through one of the ports of entry.

22 Wouldn't you agree with me?

23 A. No.

24 Q. Okay. Were you handling -- or were you made aware that
25 Victor Pimentel was an informant?

1 A. I knew Victor was working with us, yes, sir, as a source.
2 Not an informant yet.

3 Q. Well, but --

4 A. My awareness.

5 Q. When an individual gets enlisted as an informant, is he
6 actually written up? Is there some kind of report?

7 A. There's actually documentation to document somebody as an
8 informant. A source is somebody that's not documented.

9 Q. Okay.

10 A. So my knowledge of it, he was a source.

11 Q. Okay.

12 A. Correct.

13 Q. So a source would not be written up?

14 A. No, not initially. A source would be assessed. And if
15 he's valuable, then we'll go ahead and sign him up as an
16 informant.

17 Q. And your understanding is that Victor Pimentel was just a
18 source?

19 A. From my understanding, dealing with him in Atlanta, yes,
20 sir.

21 Q. Was Victor Pimentel being monitored by your office or by
22 the El Paso office, if you know?

23 A. Not by my office that I'm aware of, sir.

24 Q. And you were asked about the e-mail address?

25 A. Yes, sir.

1 Q. The south?

2 A. Bellsouth.

3 Q. South Bell?

4 A. Yeah.

5 Q. Yes, sir.

6 And your testimony is that's not your e-mail.

7 A. No, sir.

8 Q. Did Mr. Delgado correspond with you by e-mail?

9 A. I recall emailing, but I believe it was on my government
10 e-mail.

11 Q. Pardon me?

12 A. I recall e-mailing back and forth with Mr. Delgado, but it
13 was on my government e-mail.

14 Q. And you don't have a copy, or you don't have access to
15 those e-mails?

16 A. No, sir.

17 Q. You don't?

18 A. No.

19 Q. You never saved them?

20 A. No, sir. Once again, if they were of any substance, of
21 course we would have saved them. But I think it was more of
22 just checking up on that initial stage of the investigation.

23 Q. Well, I understand that what happened in Chicago, in
24 July 2008, was significant to your service office; is that
25 correct?

1 A. No, sir.

2 Q. It wasn't?

3 A. It had nothing to do with us.

4 Q. Okay. What happened in September 2007, was that
5 significant?

6 A. The actual seizure of the million dollars?

7 Q. Yes, sir.

8 A. Yes, sir.

9 Q. Did you start up a file on Marco Delgado?

10 A. I didn't.

11 Q. Did your office start one?

12 A. Yes, sir.

13 Q. Okay. Who would have been handling that file?

14 A. The investigative report would be the case agent.

15 Q. Who was the case agent?

16 A. Tom Justice, initially.

17 Q. So he would have access -- or he would have control over
18 that file?

19 A. Not necessarily, because he's no longer in the office.

20 Q. He would have --

21 A. He would have, yes, sir.

22 Q. -- in the past?

23 A. Correct.

24 Q. Now in addition to Mr. Delgado visiting with you, did he
25 visit -- or did he have contact with Tom Justice?

1 A. Yes.

2 Q. Did he have contact with anybody else in the office?

3 A. Yes. Our group.

4 Q. With who?

5 A. Our group, the financial group.

6 Q. And who -- was Jeff Walton a member of your group?

7 A. Yes, sir.

8 Q. Prior to testifying here this afternoon, did you consult
9 with him to verify if he had any information regarding Marco
10 Delgado?

11 A. No, sir.

12 Q. More specifically, whether or not he had any information
13 about any contacts that Marco Delgado had with the Atlanta SAC
14 office?

15 A. I haven't talked to Special Agent Walton in several months.

16 Q. How many reports did you generate regarding this
17 investigation?

18 A. If I recall correctly just the one, UC phone call reports.

19 Q. Just the phone calls?

20 A. Yes, sir.

21 Q. And your alias was Rafa Solis?

22 A. One of my aliases, yes, sir.

23 Q. At least in this investigation?

24 A. Yes, sir.

25 Q. Rafa Solis.

1 Have you used that alias before in other
2 investigations?

3 A. Several.

4 MR. VELARDE: May I just have a minute?

5 THE COURT: You may.

6 MR. VELARDE: Agent, I believe that concludes my
7 questions. Thank you very much.

8 THE WITNESS: Thank you, sir.

9 REDIRECT EXAMINATION

10 BY MS. KANOF:

11 Q. Agent Ascencio --

12 A. Yes, ma'am.

13 Q. -- did the prosecutor before me, Juanita Fielden;
14 prosecutor and my co-counsel, Anna Arreola; or myself ask you,
15 Could you please review all these calls because you're an
16 expert in undercover?

17 A. Yes, ma'am.

18 Q. And did we ask you -- in fact you were on vacation, out of
19 the country?

20 A. Yes, ma'am.

21 Q. Even then we reached out to you in Italy --

22 A. Yes.

23 Q. -- to -- we e-mailed you the transcripts for you to review
24 them, correct?

25 A. Correct.

1 Q. And you reviewed them. Did you tell us what you found?

2 A. Yes, ma'am.

3 Q. And you testified to it?

4 A. Yes, ma'am.

5 Q. Okay. And in regard to that, would you also have reviewed
6 them to know -- to learn about what had happened in the
7 investigation to continue pushing Mr. Delgado to introduce you?

8 A. Yes, ma'am.

9 Q. Okay. So you would have had the knowledge that you needed
10 from what happened in El Paso?

11 A. Yes. To make an educated move, correct.

12 Q. Okay. Now, Mr. Velarde asked you about the toll records.

13 Did you testify on direct that you were present in the
14 December 8th conference call with Mr. Delgado when he was
15 advised of the threat?

16 A. Yes.

17 Q. And did he tell all of the agents involved in that
18 conversation that he participated in Chicago without telling
19 ICE?

20 A. He did.

21 Q. Did he say, I tried to get ahold of you to tell you that it
22 was going to happen in Chicago, but you didn't pick up the
23 phone?

24 A. No.

25 Q. Did he say, I tried to get ahold of Agent Justice, but he

1 didn't pick up the phone?

2 A. No.

3 Q. Did he say, Don't you remember, Mr. Ascencio, that there
4 was a 9-minute phone call where I told you all about what was
5 going to happen in Chicago?

6 A. No.

7 Q. Did he tell you he did Chicago without informing ICE?

8 A. He did.

9 Q. Do you have Exhibit 58A in front of you?

10 A. 58A, yes, ma'am.

11 Q. The transcript to the September 14th 4:00 call.

12 A. Correct.

13 Q. This is the call where you're introduced, correct?

14 A. Correct.

15 Q. Okay. If you would first turn to page 5.

16 A. (Witness complies.)

17 Q. At the bottom, where Mr. Delgado is talking and says, and
18 that our friend, the one that had the tourist visa, is back in
19 his house.

20 Do you recall that he said that?

21 A. Yes.

22 Q. Did Paco not know what he was talking about?

23 A. No. He knew exactly what he was talking about.

24 Q. So you -- if ICE had provided that information without
25 knowing about the organization, would Paco have said, What are

1 you talking about, Delgado?

2 A. No. Absolutely not. No.

3 Q. If you would turn, please, to page 19.

4 A. (Witness complies.)

5 Q. And now, let me ask you. You had access to Mr. Delgado.

6 Did you have access to Paco?

7 A. As a -- in what fashion?

8 Q. Did Paco know he was being taped by ICE?

9 A. No, ma'am.

10 Q. Did ICE brief Paco and give him a story?

11 A. No, ma'am.

12 Q. And on page 19, when Paco says, Marco, it's logical that
13 these men, these clients, are very nervous thinking that we
14 deceived them.

15 What does Mr. Delgado say? It's on the next page, top
16 of 20.

17 A. 20?

18 Q. Uh-huh.

19 A. He says, Yes.

20 Q. He says, Yes.

21 Okay. That's Paco that's talking, not Mr. Delgado,
22 correct?

23 A. Correct.

24 Q. And on page 20, is it -- who says, and there have been --
25 there have been threats. There have been death threats. And

1 what I've told Chuy, and now I tell you, is how we can resolve
2 this. Meanwhile, or while we get or don't get the money back,
3 how can we, with your experience in these matters?

4 Who's saying that?

5 A. Paco, to Delgado.

6 Q. Okay. And nobody at ICE told Paco to say they were death
7 threats and imply that this was a drug cartel, correct?

8 A. Correct.

9 Q. On page 26.

10 Are you there?

11 A. Yes, ma'am.

12 Q. Who says, At the time -- at the same time, I don't want to
13 mention that -- nothing. But I've told Chuy, You can't expose
14 me and your cousin. The truth, with all respect, because of --
15 because all of that means that when one is involved in a
16 business whatever others do in the -- in the sloppy form that
17 they have done without obviously consulting anyone about the
18 procedure, everyone has to pay for this.

19 A. It's Paco talking to Delgado.

20 Q. Turn to page 28.

21 A. Yes, ma'am.

22 Q. And if you look before, you'll see it's you talking that
23 I'm going to ask about.

24 A. Correct.

25 Q. Okay. With Paco, it's Rafael again. That's you, correct?

1 A. Yes.

2 Q. On page 28 do you say, I'm willing to help you and Marco to
3 move this easily electronically via my companies?

4 A. Correct.

5 Q. That's you?

6 A. Yes, ma'am.

7 Q. Correct. That's not Marco?

8 A. No.

9 Q. On page 29.

10 At the bottom who says, I agree. But like I told
11 Marco, that is the proposal, a thought, that today I think is
12 secondary, in the sense that right now the situation, as I see
13 it, is that some very nervous people who think we stole from
14 them and who could begin using violence. Okay?

15 Who's talking?

16 A. Paco.

17 Q. And later in that same conversation who says, And they
18 have -- and Marco knows it well -- the documentation of the
19 identity of everyone except mine because, by chance, I wasn't
20 there.

21 A. Correct. Paco.

22 Q. Okay. You didn't give Paco that information?

23 A. No. He's relaying it to me directly.

24 Q. And in fact, Paco says, And Marco knows it very well,
25 correct?

1 A. Correct.

2 Q. On page 31. Who says that Pete and Chuy -- Let me tell you
3 something. Pete and Chuy are willing to place tomorrow --
4 tomorrow -- today on the table, properties valued at
5 \$3 million?

6 A. Paco, once again.

7 Q. So it wasn't you that gave that information?

8 A. No, ma'am.

9 Q. Okay. And on page 33?

10 A. Yes, ma'am.

11 Q. In the middle of the page who says, And let's say that
12 we're normal people who would never kill anyone for money?

13 A. Paco.

14 Q. And that's a hypothetical, correct?

15 A. Yes, ma'am.

16 Q. You heard the tone?

17 A. Exactly.

18 Q. Does Paco also say in that, It's Pete, it's Chuy. Pete and
19 Chuy are willing to say, you know, we will put up the money.

20 A. Correct.

21 Q. Who says on that same page, I don't know, Marco, if you
22 with your influence, with your power. I understand what you
23 just told me, that the option of having already the product
24 ready and go tomorrow and return the product to its final
25 destination is impossible?

1 A. Paco.

2 Q. Okay. And we went over this, so I'm not going to belabor
3 it a whole lot more.

4 But does Paco say in this, You are our leader?

5 A. Yes.

6 Q. Does Paco say, Marco, you are the smartest one of all of
7 us?

8 A. He does.

9 Q. Did you tell Paco to say that?

10 A. No.

11 Q. Turn, please, to page 40.

12 A. Yes, ma'am.

13 Q. You'll need to refer to 39 to see who was speaking.

14 A. Okay.

15 Q. Is it Mr. Delgado who is speaking?

16 A. Yes, ma'am.

17 Q. And does he say on page 40, She told me that someone had
18 chambered a round on Chuy?

19 A. Correct.

20 Q. What does "chambered a round" mean?

21 A. Basically, somebody got an actual threat. Probably a gun
22 was pulled on somebody.

23 Q. Okay. I'm not talking euphemistically.

24 A. Yes.

25 Q. I'm talking -- what is a round and what is a chamber?

1 A. Chamber a round is chambering -- pulling back on the slide
2 of a gun and inserting a bullet into the actual barrel ready to
3 be fired.

4 Q. Okay. This is -- you're there. This is September 14th.
5 And up to this point -- up to this conversation violence has
6 not been discussed, correct?

7 A. Correct.

8 Q. And did you suggest to put violence into this conversation
9 by talking about a chamber and a round?

10 A. Absolutely not.

11 Q. After he talks about the chambered round, does Mr. Delgado
12 say, And who knows what? I don't doubt it, because these are
13 really serious people.

14 A. Yes, ma'am.

15 Q. But one thing is to be speaking amongst businessmen;
16 another is when we are not, correct?

17 A. Correct.

18 Q. If this had not been -- I mean, Paco did not respond, I
19 don't know what you're talking about.

20 A. No.

21 Q. These aren't serious people.

22 A. No. He understood it as it was said.

23 Q. On page 43, again, Paco. On page 43, does Paco talk about
24 Chuy's people?

25 A. Yes, ma'am.

1 Q. And does he say, No, no. We do not want more business. We
2 don't want to do anything more with you. We want our money and
3 we want it now.

4 A. Yes, ma'am.

5 Q. And he's quoting Chuy, correct?

6 A. Correct.

7 Q. And you know that Marco Delgado was also in contact with
8 Chuy?

9 A. Yes.

10 Q. You know that Marco Delgado was the one who provided Chuy's
11 phone number to Lilian de la Concha?

12 A. Correct.

13 Q. And does Marco Delgado dispute what Paco says?

14 A. No.

15 Q. And at page 47, just for reference, that's where Paco says,
16 At least you are the smartest amongst all of us and the one who
17 knows the most about this?

18 A. Yes, ma'am.

19 Q. And what does Mr. Delgado respond?

20 A. Yes.

21 Q. On page 48 Paco says, Yes, you are -- you, as leader,
22 this -- okay. As my leader.

23 And what does Delgado respond?

24 A. "Yes."

25 Q. And in fact, Paco asks Mr. Delgado what to do next on that

1 page, correct?

2 A. He's looking for guidance, correct.

3 Q. And Mr. Delgado gives that guidance?

4 A. Yes, ma'am.

5 Q. Finally on page 50, at the bottom, Paco is the one that
6 counts the number of people in the conspiracy to determine who
7 owes how much money, correct?

8 A. Correct.

9 Q. Okay. In McAllen -- was Delgado in McAllen?

10 A. No, ma'am.

11 Q. So there aren't any of Delgado's statements if, indeed,
12 that was recorded and the recording came out. There wouldn't
13 be any statements about Mr. -- or Mr. Delgado would not be
14 talking?

15 A. No.

16 Q. Okay. And were you talking in McAllen about what had
17 happened in the past or --

18 A. Yes.

19 Q. -- or were you talking about what you were going to do in
20 the future?

21 A. We talked about what had happened in the past with the
22 seizure of the money. And in the future to try to, you know,
23 see if we could get the money back, as the ruse, and to try to,
24 you know, get pickups from this organization.

25 Q. Mr. Velarde asked you whether or not the Mexican people --

1 the question was posed to you -- The Mexican people never told
2 you the money came from the cartel.

3 A. Correct.

4 Q. Have you ever, in your experience as a Title III agent, as
5 an undercover, in your vast narcotics experience, heard anybody
6 in a recording in an organization say the money came from the
7 cartel?

8 A. No. That's what I was trying to explain. They never will
9 admit to that facet. That's a big no-no. It's an unwritten
10 rule between these organizations. You don't talk about who
11 runs it.

12 Q. I think you also testified that they suspect that they're
13 always being listened in on?

14 A. Yes, ma'am.

15 Q. And would it make sense for them to outwardly say, Well,
16 here, us guys in the XYZ cartel, that's our money?

17 A. Exactly. They would never do that.

18 Q. Okay. You spent a lot of time testifying about code this
19 morning, correct?

20 A. Yes, ma'am.

21 Q. Also, Mr. Delgado introduced you as a trusted lifelong
22 person, right?

23 A. Correct.

24 Q. Why would they even want -- or have to talk about it?

25 Wouldn't they assume that you knew what the source of the money

1 was?

2 A. Yes. Correct.

3 Q. Okay. Agent Ascencio, you testified that you were not
4 picking up or interested in talking -- his calls -- interested
5 in talking to Mr. Delgado by the middle of 2008, correct?

6 A. Correct.

7 Q. Basically, were you blowing him off?

8 A. Yes.

9 Q. Do you ever recall receiving a voice mail of anything
10 specific that he would give you?

11 A. No.

12 Q. Several times you've testified that he -- you would have to
13 instruct him to shut up, correct?

14 A. Yes.

15 Q. Did you have -- you had to do that when you were monitoring
16 him on the consensual calls to the cartel, right?

17 A. Correct.

18 Q. You had to do that in December -- on December 3rd of 2008,
19 when you -- when ICE was telling him his life was in danger.
20 You couldn't shut up him up, correct?

21 A. Correct.

22 Q. So does that provide a picture of how your agency, assuming
23 Special Agent Justice had the same opinion, how your -- what
24 your agency thought about the information that Mr. Delgado had
25 to give to you?

1 MR. VELARDE: Your Honor, I'm going to object to the
2 question. It calls for speculation on the part --

3 THE COURT: I'll sustain the objection.

4 BY MS. KANOF:

5 Q. What was your government IP address?

6 A. IP address?

7 Q. When you were in Atlanta, what was your government --

8 A. Service provider.

9 Q. Okay. Service provider, let's start there.

10 No, but the -- it's like you know in my office, we're
11 @doj.gov.

12 A. Correct.

13 Q. So you would have been what?

14 A. My government would be @dhs.gov.

15 Q. Okay. You were actually already DHS at that time?

16 A. Yes, ma'am.

17 Q. And so if an e-mail had come from your government account,
18 it would have said something like Alex, underscore, Ascencio,
19 @dhs.gov?

20 A. Correct.

21 Q. It would not have said Bellsouth?

22 A. No.

23 Q. Because Bellsouth is not the government provider, correct?

24 A. Correct.

25 MS. KANOF: Okay. I think that's all.

1 Thank you.

2 RECROSS-EXAMINATION

3 BY MR. VELARDE:

4 Q. Agent Ascencio --

5 A. Yes, sir.

6 Q. -- the whole purpose for conducting consensual monitored
7 recorded conversations is so that you can establish facts that
8 will lead to a successful investigation; is that correct?

9 A. Well, the recording of those conversations is to have them
10 for prosecution purposes.

11 Q. Well, yes. But obviously, you have an objective to get the
12 people on the other end to say those things that you want to
13 hear?

14 A. Correct.

15 Q. Okay.

16 So -- and you already told me it's a lot of role
17 playing. You were projecting yourself as a -- as a drug
18 trafficker.

19 A. As a businessman, yes, sir.

20 Q. As a businessman that also dealt in drugs?

21 A. Correct.

22 Q. Or were you? Did you tell them that?

23 A. No.

24 Q. Okay. So you were just a businessman?

25 A. Correct.

1 Q. But in the process -- in the course of trying to get into
2 their circle, you are projecting yourself as the most credible
3 person out there to help them out?

4 A. Somebody that they could trust, correct.

5 Q. That's right. Now when you co-opted Mr. Delgado to assist
6 you, you debriefed him and you gave him a script. And you
7 basically told him, This is what we want, for you to get on the
8 phone and to talk to these people and get something out of
9 them, correct?

10 A. Correct.

11 Q. So if they're saying, Marco Delgado, you're great, you
12 don't expect Mr. Delgado to say, No, no, no, I'm not great,
13 right?

14 A. Correct. They're talking --

15 Q. You want him to play along?

16 A. Yeah. They --

17 Q. You want to him to play along?

18 MS. KANOF: Objection, Your Honor.

19 THE COURT: Let him answer. Let him answer.

20 BY MR. VELARDE:

21 Q. You want Mr. Delgado to play along with whatever they are
22 saying?

23 A. To whatever facts they were giving us at that time, yes.

24 Q. Now, the fact is that on September the 8th you weren't
25 here.

1 A. Not in El Paso.

2 Q. The second delivery?

3 A. Correct.

4 Q. They made a controlled delivery and they were subsequently
5 stopped. Isidro Rubio -- Vega-Rubio and Pedro Mendoza-Meneses?

6 A. Yes, sir.

7 Q. Okay. And they were taken into custody?

8 A. Okay.

9 Q. And then Mr. Delgado is coached. You go in there and
10 release -- get these guys released, right?

11 A. I wasn't here.

12 Q. Okay. Well, did you learn that they got released?

13 A. I learned they were released, yes, sir.

14 Q. And that they were released to Mr. Delgado?

15 A. No. I didn't learn it until after the fact.

16 Q. You didn't -- okay. Well, he got them released?

17 A. Yes, sir.

18 Q. Now, if people -- Pedro Mendoza-Meneses gets released on
19 September the 8th --

20 A. Yes, sir.

21 Q. -- this conversation takes place on September the 14th.

22 A. Uh-huh.

23 Q. I think it's a safe assumption --

24 MS. KANOF: Objection; testifying, Your Honor. I
25 think it's a safe assumption.

1 THE COURT: I'll sustain the objection.

2 BY MR. VELARDE:

3 Q. If Mr. Mendoza-Meneses and Isidro Vega are back in Mexico,
4 do you have any doubt that they were in contact with each
5 other, with the people down there? Do you have any doubt?

6 A. I really don't know.

7 Q. Pardon me?

8 A. I really don't know.

9 Q. Well, they got released.

10 A. Okay.

11 Q. And this phone call happened some six days later.

12 A. Yes, sir.

13 Q. The conversation that took place on December 2008, how long
14 did this conversation last?

15 A. When we called him about the threat?

16 Q. Yes, sir.

17 A. Not very long.

18 Q. Not very long?

19 A. Not very long, no. Once we got to the point where he
20 needed to get to the office ASAP, I hung up the phone, and my
21 agents called El Paso to let them know that he was on his way
22 to the office.

23 Q. Would it be safe to say that the main reason for getting
24 him to the office was to alert him to this threat?

25 A. Yes.

1 Q. That was the main objective of getting him there?

2 A. Our objective was to save his life.

3 Q. Yes, sir.

4 A. We had a viable threat, so we're going to do everything we
5 could to keep him alive.

6 Q. And that subject was touched upon seriously?

7 A. Yes, very seriously.

8 Q. And in the context of that conversation, you also inquired
9 about other things, you said.

10 A. Correct.

11 Q. And of course, you were just a participant. Were you the
12 one leading the discussion or was somebody else leading that
13 discussion?

14 A. We were there as a group. So...

15 Q. Well, my question is very simple.

16 Were you asking questions?

17 A. We were all asking questions as a group.

18 Q. Were you asking questions?

19 A. We were all --

20 THE COURT: He said we all are.

21 BY MR. VELARDE:

22 Q. Were the ques- -- was El Paso in the lead or were you guys
23 in the lead, in Atlanta?

24 A. For the conference call?

25 Q. Yes, sir.

1 A. It was us.

2 Q. And was Tom Justice involved in that discussion?

3 A. At that point, I don't believe so. I think he was gone.

4 Q. Was Jeffery Walton involved?

5 A. Yes, sir.

6 Q. Okay.

7 On December 3rd, was there a conference call or a
8 meeting of sorts, an interview of Mr. Delgado?

9 MS. KANOF: Your Honor, asked and answered.

10 MR. VELARDE: Okay.

11 BY MR. VELARDE:

12 Q. That wasn't recorded, correct?

13 A. Not that I know of.

14 MR. VELARDE: Okay. Thank you very much. Nothing
15 further.

16 THE WITNESS: Thank you, sir.

17 MR. VELARDE: I have nothing further of this witness,
18 Your Honor.

19 THE COURT: May this witness be excused?

20 MS. KANOF: Please.

21 THE COURT: Okay. You're excused. You're free to
22 leave.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Call your next witness.

25 MS. KANOF: John McCabe.

1 (Witness duly sworn.)

2 THE WITNESS: I do.

3 MS. KANOF: May I proceed, Your Honor?

4 THE COURT: You may proceed.

5 JOHN MCCABE, GOVERNMENT'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MS. KANOF:

8 Q. What's your name?

9 A. John McCabe.

10 Q. How are you employed?

11 A. I am an agent with the Immigration and Customs Enforcement.

12 Q. Do you hold a titled position?

13 A. I do. I'm currently Assistant Special Agent in Charge for
14 the Office of Professional Responsibility in Chicago.

15 Q. Okay. That's a lot. You're the assistant.

16 What's the Office of Professional Responsibility?

17 A. It's internal affairs for ICE.

18 Q. Okay. Every law enforcement agency has people that
19 investigate their own, correct?

20 A. Correct.

21 Q. And you're the Assistant Special Agent in Charge of that in
22 Chicago?

23 A. Yes. For the northeast region, which covers 19 states in
24 the U.S.

25 Q. Okay. And where did you come from before you went to

1 internal affairs, so to speak?

2 A. I was a special agent in the Chicago office of Homeland
3 Security Investigations for seven years. My initial two years
4 as an investigator, and the last five as a group supervisor.

5 Q. Okay. And before that you were also law enforcement?

6 A. Yes. I was -- I spent five years prior to coming into ICE
7 as a special agent with the Secret Service in Chicago.

8 And prior to that, I had local law enforcement
9 employment with the City of Chicago for five years and the City
10 of Dallas for two years prior to that.

11 Q. Okay. So other than the mistake of coming to Texas for two
12 years, you've been in Chicago the whole time?

13 A. Yes, ma'am.

14 Q. In July of 2008, what was your assignment in the Chicago
15 Homeland Security office?

16 A. I was group supervisor of the financial and money
17 laundering group.

18 Q. Okay. How many people were in your group?

19 A. At that time I had approximately 12 special agents and 8
20 task force officers assigned to me, a group of about 20.

21 Q. And your responsibilities as a financial group were to do
22 what?

23 A. Oversaw the daily investigations and the undercover
24 activities of the group.

25 Q. Let me draw your attention to July 22nd, 23rd, and 24th of

1 2008. And of course you know what we're talking about?

2 A. Yes, ma'am.

3 Q. Did you receive a call from Marco Delgado at any time
4 telling you that there was going to be a \$100,000 drug money
5 pickup in Chicago?

6 A. From Mr. Delgado, no.

7 Q. Okay. Who did you receive a call from?

8 A. Initially, we received a call from the El Paso ICE office
9 asking us if we would help them coordinate an undercover pickup
10 in Chicago utilizing one of their informants.

11 Q. Okay. And what did you say?

12 A. Absolutely.

13 Q. What happened after you received that phone call?

14 A. On the 22nd, we made contact with the El Paso ICE office
15 again. They informed us that they had coordinated and that
16 informant was going to travel to Chicago.

17 Q. What happened next?

18 A. The informant, we gave out --

19 Q. Well, let me ask you something -- a little bit about that.

20 Normally, would informants travel with law
21 enforcement?

22 A. It depends. It depends on how much faith that office has
23 in their informant.

24 Q. Would it also depend on when they received the information,
25 that they had time to get their vouchers and their requests for

1 travel and money and all that?

2 A. Correct.

3 Q. Okay. So he came by himself, regardless of why?

4 A. He did.

5 Q. And what happened when he arrived in Chicago?

6 A. Approximately 9:00 in the evening he called us from O'Hare
7 airport, said he had just landed.

8 Q. What was his name? I don't know if we said that.

9 A. The informant's name was Victor Pintana.

10 Q. Pimental?

11 A. Pimental. I apologize.

12 Q. Pimentel?

13 A. Pimentel.

14 Q. Okay. Do you speak Spanish?

15 A. None.

16 Q. Okay. Do you have any Spanish -- in 2008 did you have any
17 Spanish-speaking agents?

18 A. I did.

19 Q. Okay. Okay. So he called you from the airport or you met
20 him at the airport?

21 A. He called us when he landed at the airport and informed us
22 that he had just gotten in Chicago. And he also informed us
23 that -- prior to calling us -- he had been called by an
24 individual who -- by the name of --

25 MR. ESPER: Your Honor, I'm going to object as

1 hearsay.

2 MS. KANOF: It's --

3 THE COURT: But he's not --

4 MS. KANOF: It's not offered for the truth of the
5 matter asserted, Your Honor. It's offered to show why they
6 acted in the manner that they did.

7 THE COURT: The objection is overruled.

8 BY MS. KANOF:

9 Q. Go ahead.

10 A. He had -- prior to contacting us, he had received a call
11 from an individual that identified himself as Martel and said
12 that --

13 MR. ESPER: I'm going to object to that, Your Honor,
14 as being hearsay.

15 THE COURT: Overruled.

16 MR. ESPER: Your Honor, it's hearsay upon hearsay.

17 BY MS. KANOF:

18 Q. Go ahead. It's okay.

19 A. That Martel was ready to deliver \$50,000 in currency to
20 him.

21 Q. Okay. So since he provided that information to you, did
22 you instruct him about his phone?

23 A. Yes. At that point we told Victor not to have any contact
24 with -- with Martel.

25 We also advised him to pick a hotel. We gave him a

1 few choices in the Oakbrook Terrace area of Chicago and told
2 him that we would meet him -- to get a hotel, and we would meet
3 him at that hotel in the next hour and a half.

4 Q. Did that happen?

5 A. Yes. He -- he got a hotel room at the Doubletree in
6 Oakbrook Terrace, and we met him at about 10:30 in the evening
7 on July 22nd.

8 Q. Is Oakbrook Terrace like a suburb of Chicago?

9 A. It is. It's about 10 miles west of the city.

10 Q. Is there a mall in Oakbrook Terrace?

11 A. There is, very close to the hotel.

12 Q. And is it -- is there a McDonald's next to the Doubletree?

13 A. It's very close. It's also the international headquarters
14 of McDonald's, is in Oak Brook.

15 Q. I know that -- well, I'll get there, to the pictures.

16 So did you meet him at the hotel?

17 A. We did. We met him that evening.

18 Q. Who went?

19 A. Myself, Agent Mike Plossell, and task force officer Jairo
20 Gutierrez.

21 Q. Okay. So at least your task force officer was Hispanic,
22 correct?

23 A. Yes. He's a naive Spanish speaker.

24 Q. Do you know what agency your task force officer was from?

25 A. From Alsip, Illinois, a suburb -- also a suburb of Chicago,

1 Alsip.

2 Q. Sheriff or police officer?

3 A. Police department. He's a police officer.

4 Q. So he was part of a task force?

5 A. Yes. He was assigned to the financial group as a task
6 force officer.

7 Q. And so the three of you went to see Victor Pimentel?

8 A. Correct.

9 Q. What happened next?

10 A. We spoke to Victor briefly about what he knew and what he
11 was sent up there to do. And then we had him initiate a call
12 to Martel.

13 Q. So you told him, Don't call him back until we're with you?

14 A. Correct.

15 Q. And now he's calling him. And what happened next?

16 A. When he made the phone call to Mr. Martel, Martel was upset
17 that Victor had missed two calls between 9:00, when he called
18 us, and 11:00, when he made the call from the hotel in our
19 presence. And Martel told him that -- that he needed to
20 contact -- that Victor needed to contact his people and that
21 Martel was going to contact his people.

22 Q. And then what happened?

23 A. At that point we had Victor call the Defendant Delgado, as
24 he was instructed. And as -- I believe that call went
25 unanswered.

1 Q. It went unanswered?

2 A. It did.

3 Q. Okay. And then what happened next?

4 A. At that point, with no further contact and it was 11:00 at
5 night, we instructed Victor to turn off his phone and not to
6 have any contact with anybody until we got back with him the
7 next morning.

8 Q. What happened the -- the next morning, fairly early in the
9 morning, what did you do?

10 A. We met with Victor at his hotel at around 8:30 in the
11 morning.

12 Q. Is this July 23rd --

13 A. Yes, ma'am.

14 Q. -- of 2008?

15 A. Yes, ma'am.

16 Q. When you say "we," it includes you?

17 A. Myself, the case agent Mike Plossell, and Task Force
18 Officer Gutierrez.

19 Q. Okay. And I understand Mike Plossell is out of the country
20 now unable -- was unable --

21 A. He is.

22 Q. So when you get there, what do you do?

23 A. We --

24 Q. Do you go into -- actually into his hotel room?

25 A. Yes, ma'am.

1 Q. Okay.

2 A. We have him initiate another call with Martel. During that
3 conversation Martel tells Victor that he had not had any
4 contact with his people. And Victor relayed the same, that he
5 hadn't had any contact with his people.

6 Q. Okay. And what happened next?

7 A. They agreed that they were both going to try to contact
8 their prospective handlers again.

9 Q. And then? Now -- it's still pretty early in the morning,
10 right?

11 A. It's around 9:00.

12 Q. Okay. And you stay with him in his hotel room, basically,
13 until this thing gets going?

14 A. Yes, ma'am.

15 Q. And were there other calls that were placed?

16 A. Yes. Shortly after his call with Martel, we have -- we had
17 Victor initiate another call with the Defendant Delgado, and
18 Victor explained the situation with -- with Martel.

19 Defendant Delgado told Victor that he would -- he
20 would make some calls and figure something out.

21 Q. During the process, were there also text messages being
22 sent between Delgado and Pimentel?

23 A. Yes. As I recall, shortly after the phone conversation, he
24 received a text from -- Victor received a text from the
25 Defendant Delgado, stating that -- that Martel was upset about

1 the way things had happened the evening earlier, with not
2 getting contacted, and that he may wait -- he may make Victor
3 wait for a while until he got to the --

4 Q. You got an opportunity to read the text message, or
5 somebody from ICE?

6 A. Yes.

7 Q. Okay. "You," the generic you.

8 And based on that, did you conclude that Delgado was
9 in contact with Martel or somebody who was in contact with
10 Martel?

11 A. Yes.

12 Q. At some point in time did Martel finally call to make the
13 delivery?

14 A. A short time after the initial text, there was another text
15 from Defendant Delgado saying, Go ahead and call Martel there.
16 He's ready to start with the pickup.

17 Q. And did you instruct Victor to do that?

18 A. He did. Shortly after getting that text, he did call
19 Martel again.

20 Q. What was the substance of that phone call?

21 A. The substance of the phone call was that -- that they
22 wanted to set up a meeting location where Martel could deliver
23 the currency to Victor. They -- they agreed to meet at the
24 McDonald's a short distance from the hotel.

25 And the -- and Martel said that he was in the area,

1 and he would be at that McDonald's in about five minutes.

2 Q. Did this whole scenario happen very fast for you --

3 A. It did.

4 Q. -- for ICE?

5 A. It did. Because to our knowledge, the location of where
6 Victor was staying was never given out. So there would be no
7 reason to believe that Martel would know that we were in the
8 Oak Brook area.

9 Q. And were photographs taken on that date of the McDonald's
10 and the mall?

11 A. Not on that date, no.

12 Q. Okay. So in order to assist the prosecution last week, did
13 you go take photographs?

14 A. I did.

15 Q. But they're not a fair and accurate reflection of the
16 ac- -- there's all kinds of street work, and they're not really
17 an accurate reflection of the way it looked on that day?

18 A. Correct.

19 Q. Okay. But we have them, if Defense Counsel would like to
20 see them.

21 So they were going to meet at the McDonald's, right?

22 A. Correct.

23 Q. And how far was the McDonald's from the Doubletree?

24 A. A couple of blocks.

25 Q. What happened next?

1 A. After that phone call, we placed a body wire on Victor and
2 placed a recording device with him. And shortly before he
3 left, in the window of about five or ten minutes, Martel had
4 called Victor again and said -- and saying that he was at the
5 McDonald's and he was waiting for him, and wanted to know where
6 he was.

7 Q. Okay. Why did you wire up Victor?

8 A. For his safety in case something...

9 Q. I mean, did you assume that he would be meeting with
10 Martel?

11 A. We did.

12 Q. Okay. That never happened, right?

13 A. Yes and no. There was -- there was conversation between --
14 there was no long conversation between them.

15 Q. Okay. But both for his safety, and also to gather
16 evidence, he was wired?

17 A. Yes, he was.

18 Q. Okay. What happened -- when Victor left the Doubletree,
19 did he walk to the McDonald's?

20 A. He did, because he had portrayed to Martel that he did not
21 have a vehicle.

22 Q. And did ICE Chicago set surveillance?

23 A. We did. Upon learning that Martel was in the area and that
24 they were going to go to the McDonald's, yes, there was a
25 surveillance team of probably no less than 10 agents waiting at

1 that McDonald's.

2 Q. Was anybody in your surveillance team parked at McDonald's
3 in a white SUV?

4 A. More than likely.

5 Q. Okay. Did your surveillance observe whether or not Victor
6 Pimentel actually stopped in the McDonald's? Did he stop at
7 the McDonald's?

8 A. Did Victor stop? I don't -- I don't recall.

9 Q. Okay. Did he proceed walking and cross the street to the
10 mall?

11 A. He did.

12 Q. Okay. But you aren't privy to why that happened?

13 A. I believe at some point --

14 MR. ESPER: Objection, Your Honor. Nonresponsive to
15 the question.

16 BY MS. KANOF:

17 Q. As part of your investigation, did you determine why Victor
18 Pimentel kept walking and -- past the McDonald's and crossing
19 the street to the mall parking lot?

20 A. Yes.

21 Q. Why?

22 A. He was instructed by Martel that he felt that people were
23 watching the McDonald's lot, and that he -- he wanted to do the
24 exchange across the street in the mall -- in the mall parking
25 lot.

1 Q. Now, was ICE -- and Victor did go to the mall parking lot?

2 A. He did.

3 Q. Was ICE able to actually see the dropping of the bag and
4 the picking up of the money?

5 A. No.

6 Q. Why?

7 A. For a number of reasons. It happened very quickly after
8 Victor was instructed to go into the mall lot. We were -- we
9 told our team to get over there as fast as we did.

10 But we also alerted them that Martel was surveillance
11 conscious, and that there were a lot of shrubs and stuff in
12 between the street and the mall that made it difficult to view
13 into the mall.

14 Q. Chicago is not a desert like El Paso, right?

15 A. No, ma'am.

16 Q. And there's -- there's tall bushes and trees that impeded
17 the ability to actually see what was happening?

18 A. Yes. All along the road where he had to cross over into
19 the mall area.

20 Q. And if you had -- if an agent had driven into the lot
21 following them, it might have scared the drop?

22 A. Absolutely. Given -- given Martel's being surveillance
23 conscious, that he had already felt that people were watching
24 him in the McDonald's lot.

25 Q. So you didn't drive into the parking lot either?

1 A. No, ma'am.

2 Q. Okay. How long was it -- between the time you lost sight
3 of Mr. Pimentel and you heard from him again, how long was it?

4 A. Probably less than five minutes.

5 Q. What happened next?

6 A. The surveillance teams were able to identify the car that
7 Martel was in. They initiated surveillance. And as Martel --
8 or as Victor walked back to the hotel, we maintained
9 surveillance on him.

10 Q. Okay. And did you go back to the hotel eventually, back to
11 his room?

12 A. Yes. Myself and Agent Plossell and TFO Gutierrez all went
13 back to the hotel.

14 Q. And what happened in his room?

15 A. He turned over to the -- the bag that he had received from
16 Martel to us. We photographed it and then counted the currency
17 inside the bag.

18 Q. Okay. I'm going to show you -- is it on your screen?

19 A. No, ma'am.

20 MS. KANOF: Display, please?

21 BY MS. KANOF:

22 Q. -- what's been marked and admitted into evidence as
23 Government's Exhibit Number 73.

24 And what are you looking at?

25 A. The bag that the -- that Victor had received from Martel.

1 Q. And where is it located?

2 A. It's on the bed of the hotel room, in -- where Victor was
3 staying.

4 Q. And now, I'm going to show you what's been marked and
5 admitted into evidence as Government's Exhibit Number 74.

6 Do you recognize what's depicted in that picture?

7 A. Yes, ma'am.

8 Q. Okay. It doesn't want to get bigger.

9 What is it?

10 A. It's a picture of the bag and the contents which was, I
11 believe, two bundles -- only two bundles, but it was all
12 vacuum-packed currency.

13 Q. There we go.

14 Did you count the money?

15 A. We did.

16 Q. How much was there?

17 A. \$50,000.

18 Q. And in that picture, that -- is that all of the money?
19 That's what \$50,000 looks like?

20 A. Yes, ma'am.

21 Q. What kind of denominations were there?

22 A. They were mostly 20s. I don't recall any big
23 denominations.

24 Q. How was it packaged?

25 A. It was bundled in, I believe, \$10,000 denominations and

1 heat sealed to make it compact. And it's also a way that
2 they -- quality assurance, so they know no one has messed with
3 it. And it's also -- they -- it's believed that the
4 drug-sniffing dogs won't smell it.

5 Q. You say it's believed that the drug-sniffing dogs won't
6 smell it. Why do you say it's believed?

7 A. Because I've never seen a dog not hit on currency.

8 Q. That was shrinkwrapped like that?

9 A. Correct.

10 Q. I also notice that in the picture there's two rubber bands
11 on each package; is that correct?

12 A. Correct.

13 Q. Okay. Were there rubber bands inside the plastic
14 shrinkwrap, or FoodSaver shrinkwrap, or were they outside?

15 A. They're inside.

16 Q. Okay. Did you break any of them open?

17 A. The --

18 Q. Any of the shrinkwrapped packages.

19 A. Yes. We broke -- we broke -- we broke all the shrinkwraps
20 open and we un-rubber banded everything and hand counted the
21 money right there in the hotel room.

22 Q. So this photo was taken before you did that?

23 A. Yes, ma'am.

24 Q. Okay. And what did you do next, basically?

25 A. After we counted the money, we had Victor initiate another

1 call to Defendant Delgado and informed him that we had
2 successfully picked up the first \$50,000, and that we were
3 waiting on instructions to pick up another \$50,000.

4 Q. Okay. And in waiting upon the other \$50,000, did you
5 remove any money from the bunch of \$50,000?

6 A. Yes. I believe we removed \$2,000, which was going to be
7 seized as fees for what Victor would have been paid to conduct
8 the currency.

9 Q. So Victor told you, I'm supposed to get \$2,000?

10 A. Yes, ma'am.

11 Q. And of course, you didn't -- at that time he wasn't given
12 that \$2,000, correct?

13 A. He was not.

14 Q. Okay. What -- but you took \$2,000 out to be consistent
15 with what the deal was?

16 A. Correct.

17 Q. What did you do with the \$2,000?

18 A. It was seized by the SAC Chicago office, so it was
19 inventoried and placed into evidence.

20 Q. Did you wait there for that phone call for the second
21 \$50,000 pickup?

22 A. We did.

23 Q. Did something unusual occur that inhibited the ability for
24 Mr. Martel to do the other \$50,000 pickup?

25 A. There was a series of calls between Victor and the

1 Defendant Delgado, at which point he said that he was having
2 problems getting ahold of people in Mexico, and specifically
3 Rafa Solis, in order to conduct -- to get information on the
4 second \$50,000.

5 Q. Okay. You remember that name that Mr. Delgado -- I mean,
6 were you overhearing the calls between Delgado and --

7 A. I was in the room, and Victor would discuss the content of
8 the calls after making them.

9 Q. Okay. But you remember the name Rafa Solis?

10 A. I do.

11 Q. Do you know that Rafa Solis was the undercover name of
12 Special Agent Alex Ascencio in Atlanta?

13 A. Not at that time, no.

14 Q. Okay. Did Victor appear to know that?

15 A. I don't recall.

16 Q. He didn't say, Oh, my gosh. He's talking to an ICE agent?

17 A. He -- I don't recall that, no.

18 Q. No. But if he had said that, would you have remembered?

19 A. Oh, I would have remembered. But he did not say that.

20 Q. Okay. And so then what happened in those telephone calls
21 while they were waiting to hear from the people?

22 A. There was a series of calls. In one of the phone calls
23 between the Defendant and Victor, he asked what had happened.

24 And Victor described what had happened, why Martel had
25 told him to go across the street, that he felt it was being

1 watched. So he described this in the phone conversation.

2 Q. He's telling Delgado, so you can hear Victor telling
3 Delgado?

4 A. Right.

5 Q. Okay. Go ahead.

6 A. And at which point the Defendant told Victor that he still
7 wasn't able to get ahold of anybody, specifically Rafa Solis,
8 and that he was working on getting an account number for Victor
9 to deposit the money into.

10 Q. Let's go back to the scene.

11 THE COURT: Well, we'll do that after the break.

12 MS. KANOF: Okay.

13 THE COURT: We'll be in recess for the next 15
14 minutes.

15 (Recess taken; open court.)

16 MS. KANOF: May I proceed, Your Honor?

17 THE COURT: You may.

18 MS. KANOF: Your Honor, during the break I found out
19 from our paralegal that we actually did provide the photos in
20 discovery as soon as we got them. And I've marked just a few
21 of the photos Government's Exhibit 86. I think it would be
22 helpful to Government's Exhibit 93, and I have shown them to
23 Defense Counsel.

24 May I proceed and add these exhibits?

25 THE COURT: What have you marked them as?

1 MS. KANOF: 86 through 93.

2 THE COURT: 86 through 92?

3 MS. KANOF: 93.

4 THE COURT: You may.

5 MS. KANOF: And if the Court wants to take objections
6 and admit them before I proceed?

7 THE COURT: Any objections, Counsel?

8 MR. ESPER: Your Honor, even though they don't -- the
9 circumstances have changed, we don't object. Even though they
10 don't fairly and accurately depict the scene back in 2002, we
11 don't object.

12 THE COURT: Well, are they really necessary?

13 MS. KANOF: I think they -- just a couple of them
14 explain the situation, Your Honor. There's an aerial photo.
15 And the buildings haven't moved, the mall hasn't moved, the
16 McDonald's hasn't moved. So I think they -- the only thing
17 that's not fair and accurate is there is some road
18 construction.

19 THE COURT: 86 -- Government's Exhibits 86 through 93
20 will be admitted.

21 BY MS. KANOF:

22 Q. Agent McCabe, I'm going to show you what's been marked and
23 admitted as Government's Exhibit Number -- it's not up on the
24 Elmo -- okay.

25 Government's Exhibit Number 86. And what does that

1 depict?

2 A. That's a picture of Spring Road.

3 Q. And the building that's depicted in that picture, is that
4 the Doubletree? Or the one behind it, is that the Doubletree?

5 A. The Doubletree is on the other side of the light. It's
6 down the block quite a bit.

7 Q. But in the direction that you're looking at?

8 A. Yes, ma'am.

9 Q. Behind those buildings?

10 A. Yes, ma'am. Correct.

11 Q. Let me show you Government's Exhibit 87.

12 What does that depict?

13 A. It depicts Spring Road, from -- the picture is taken from
14 the corner of Spring and Cermak, looking into the mall.

15 Q. Well, if you look at the right-hand side of Government's
16 Exhibit Number 87, do you see the golden arches?

17 A. I do.

18 Q. Okay. So this would be the view that Mr. Pimentel would
19 have had when he left the Doubletree and was walking down the
20 street?

21 A. Correct.

22 Q. Toward McDonald's, correct?

23 A. Correct.

24 Q. Government's Exhibit Number 88.

25 And you said that's like the national training center

1 of McDonald's?

2 A. Across the way from Oak Brook, but that's the main training
3 McDonald's they have for their corporate people.

4 Q. And the construction sign and the orange -- I don't know
5 what you call --

6 A. Construction cones? Construction barrels?

7 Q. Barrels. Okay. Those weren't there on that day?

8 A. No, ma'am.

9 Q. Okay. But is this view from McDonald's looking towards the
10 mall?

11 A. Yes.

12 Q. Okay. And does it accurately depict the manner of the
13 foliage in July of 2008?

14 A. Yes.

15 Q. So you can't really even see the mall, correct?

16 A. No, you can't.

17 Q. Or the parking lot?

18 A. You cannot.

19 Q. Government's Exhibit Number 89.

20 Is that an aerial photograph of the area?

21 A. Yes, ma'am.

22 Q. Okay. And basically, you have indicated that -- on the
23 lower right-hand corner, that area that I've circled is the
24 Doubletree?

25 A. Yes, ma'am.

1 Q. Okay. And would McDonald's then be here (indicating)?

2 Sorry. Is this -- is the McDonald's here
3 (indicating)?

4 A. Yes, ma'am.

5 Q. Okay. And then crossing -- you pointed to the mall parking
6 lot where the pickup took place.

7 Are these (indicating) the bushes?

8 A. That would be the roadway.

9 Q. Oh, sorry. It's the roadway.

10 A. The bushes would be immediately -- correct.

11 Q. Okay. Right where I'm pointing. So those (indicating) are
12 the bushes.

13 So from the street, the bushes obstructed the view of
14 the parking lot, correct?

15 A. Yes, ma'am.

16 Q. And you testified that you did not have the agents take the
17 street and go into the parking lot, correct?

18 A. Correct.

19 Q. And do you know what store this is?

20 A. I believe that's a Macy's.

21 Q. Okay. The money was in a Hollister bag, correct?

22 A. Yes, ma'am.

23 Q. Is there -- do you know whether or not there's a Hollister
24 store in that mall?

25 A. I do not know.

1 Q. Okay. Government's Exhibit Number 90.

2 Is that now a view inside the parking lot?

3 A. Yes.

4 Q. I'm sorry. With the bushes, that are on the right side of
5 the photograph, the bushes that we saw that obstructed the view
6 from McDonald's?

7 A. Yes, ma'am.

8 Q. Government's Exhibit Number 91.

9 Is that -- is this photo also inside the parking lot?

10 A. Yeah. The picture inside the parking lot looking at the
11 mall.

12 Q. Okay. And why did you take this particular view?

13 A. Just to show how -- the relationship of the parking lot to
14 the mall.

15 Q. Okay. And Government's Exhibit Number 92.

16 What was the purpose of putting that SUV in the --
17 this isn't an SUV that was involved in the transaction?

18 A. No. No, it was not.

19 Q. What was the purpose of you placing an SUV there to take
20 the photographs?

21 A. To show how high the foliage was from the parking lot.

22 Q. And just because we live in El Paso and we don't get to see
23 this very often, is that a picture of the foliage?

24 A. That's the picture of -- from Spring Road looking into the
25 mall -- of the foliage as you go down the street.

1 Q. Thank you.

2 Now, you -- when we left before the break, you were
3 talking about how Delgado and Pimentel were talking to each
4 other and texting each other waiting for that other \$50,000,
5 correct?

6 A. Correct.

7 Q. At some time in the morning, going back to the surveillance
8 of the individual who dropped the money, did people follow him?

9 A. Yes.

10 Q. Who followed him?

11 A. We had a surveillance team of approximately eight agents
12 follow the individual known as Martel from the mall parking
13 lot.

14 Q. Did -- were task force officers included in that?

15 A. Yes, ma'am.

16 Q. Okay. And what did you instruct, or someone from ICE,
17 instruct those officers to do with regard to Martel's vehicle?

18 A. At some point, one of the task force officers called me and
19 let me know that -- that the vehicle that Martel was driving
20 was driving erratically and appeared to be evasive, and that
21 they had run the plate, and that the license plate on the
22 vehicle came back stolen.

23 Q. So what did they do?

24 A. At that point I told him to initiate a traffic stop based
25 on the stolen license plate, but they were to make no mention

1 of the currency transaction between Martel and Victor.

2 Q. Did that happen?

3 A. Yes, it did.

4 Q. Okay. So how -- how much time elapsed between the drop of
5 the money and his getting stopped for a traffic stop?

6 A. I believe it was, like, 15 or 20 minutes.

7 Q. So was Mr. Pimentel even back at the hotel by the time that
8 Martel was stopped?

9 A. I believe he had -- he was -- he had been back at the hotel
10 by that time.

11 Q. Okay. But not for very long?

12 A. No.

13 Q. So when the -- the transactions were occurring on the phone
14 and the text, was there any -- ever any discussion between
15 Pimentel and Delgado that something had happened?

16 A. One of the later conversations that they had, yes.

17 Q. Okay. How long did you wait at the hotel for that call
18 that now you knew Martel was not going to make?

19 A. I'm sorry. One more time?

20 Q. Okay. Once -- did you know that Martel was supposed to
21 drop the second 50,000 as well?

22 A. We did not. We -- we had thought that Martel was not going
23 to be involved in the second drop of \$50,000, which was another
24 reason that we initiated the traffic stop. We believed that
25 the source of the other \$50,000 was going to be from a separate

1 individual.

2 Q. Okay. So you still waited at the hotel, thinking that a
3 call would come in for Victor to pick up the other 50,000?

4 A. Correct. And that was the -- the first call that we had
5 Victor initiated, after we counted the money to Defendant
6 Delgado, was that we had received the money, that there was
7 \$50,000, and we were ready -- he was ready. Victor was ready
8 to pick up the other \$50,000, because he was sent up there to
9 pick up \$100,000.

10 Q. Do you know how long you waited in the hotel?

11 A. There was a series of calls between approximately noon and
12 2:30, 3:00, that we waited.

13 In one of those calls Defendant Delgado made -- made
14 reference that he was trying to get an account number from Rafa
15 Solis. And Victor had informed us that he did have an account
16 number for a Wells Fargo account.

17 Q. So when Victor arrived in Chicago, he already had a Wells
18 Fargo account number, correct?

19 A. Correct.

20 Q. Did you know what the source of that number was?

21 A. We did not know.

22 Q. Okay. So what happened next?

23 A. At that point, knowing that there were no Wells Fargo banks
24 in Chicago -- the closest one was in Racine, Wisconsin, which
25 is just over the border from Illinois, Agents Plossell and Nate

1 Cravata and Task Force Officer Gutierrez took Victor and they
2 went to that Wells Fargo up in Wisconsin.

3 Q. What happened at the bank?

4 MR. ESPER: Excuse me. It's not within his personal
5 knowledge. It's hearsay.

6 THE COURT: I'll sustain the objection.

7 MS. KANOF: As part of the --

8 I'm sorry, Your Honor?

9 THE COURT: I'll sustain the objection.

10 MS. KANOF: Okay.

11 BY MS. KANOF:

12 Q. Ultimately, was Victor able to deposit the money in the
13 bank account in Racine?

14 MR. ESPER: Objection, Your Honor. Not within his
15 personal knowledge.

16 MS. KANOF: Oh, that he would know, Your Honor.

17 THE COURT: Overruled.

18 A. No, he was not.

19 BY MS. KANOF:

20 Q. So as the group supervisor, were you required to secure the
21 money?

22 A. I was.

23 Q. What did you do?

24 A. They brought the money back from Wisconsin, and it was
25 secured in my safe overnight.

1 Q. Okay. And what happened the next day?

2 A. The next day, around 11:00, 11:15, we had Victor initiate
3 another call to Defendant Delgado.

4 Q. Where was -- where was he located when these calls were
5 taking place?

6 A. I believe they were back in the hotel room.

7 Q. Okay.

8 A. And at that point, Mr. Delgado had told them that he still
9 couldn't get ahold of anybody.

10 And Victor told Defendant Delgado that he was going to
11 drive the money back to El Paso.

12 Q. Okay. And who -- did he make that decision on his own?

13 A. No. That decision -- the decision that that's what we
14 would tell Defendant Delgado was made in consultation with the
15 El Paso HSI office.

16 Q. Did he -- and did you rent him a car to drive back to
17 El Paso?

18 A. No. He flew back from O'Hare airport.

19 Q. Okay. Before he flew back, was more money removed from the
20 now \$48,000 stash?

21 A. Yes. It was a total of \$5,000. So \$2,000 previously, and
22 another \$3,000 was taken from the stash.

23 Q. Why did you remove another \$3,000?

24 A. It was for additional expenses for Mr. -- for Victor to
25 get back to El Paso.

1 Q. And who instructed Victor to take the extra money?

2 A. Defendant Delgado.

3 Q. What actually happened to the money? How did it leave
4 Chicago?

5 A. I believe the following day it was -- in consultation again
6 with the agents in El Paso -- was deposited into an ICE account
7 in Chicago and wire transferred to an El Paso account, HSI
8 El Paso account, here in El Paso.

9 Q. And what happened to Victor?

10 A. Victor was put on an airplane and sent back to El Paso.

11 Q. Was that -- did that end ICE Chicago's responsibility with
12 regard to this transaction?

13 A. Yes, ma'am.

14 MS. KANOF: Pass the witness.

15 CROSS-EXAMINATION

16 BY MR. ESPER:

17 Q. Mr. McCabe, what is the -- what time is Chicago on? Is it
18 Eastern or Central?

19 A. Central Standard Time, sir.

20 Q. Okay. And actually, right now, it would still be Central
21 Daylight Time, correct?

22 A. Yes, sir.

23 Q. Okay. But when you go off of daylight savings, it becomes
24 Central Standard Time, correct?

25 A. Correct.

1 Q. Okay. And it's not Eastern?

2 A. No. No, sir.

3 Q. Okay. And you've lived there for many years, and you would
4 know that, correct?

5 A. Yes, sir.

6 Q. Now whenever you were contacted by ICE, this came as a
7 total surprise to you and your fellow agents up there in
8 Chicago, did it not?

9 A. We didn't have -- we didn't have previous knowledge about
10 the case until they contacted us, no.

11 Q. So actually, they contacted you the same day that
12 Mr. Pimentel arrived, correct?

13 A. They did. We had conversations with them the week prior,
14 and they told us they had anticipated something, but it was
15 still in the works.

16 Q. Okay. So you had received a call a week prior to July 22nd
17 from El Paso ICE that there may be a pickup of currency in
18 Chicago?

19 A. Yes, sir.

20 Q. But they were not -- it was not a confirmed thing in
21 their -- to you all?

22 A. No.

23 Q. And did they mention names to you at that time?

24 A. Not at that time. It was very preliminary.

25 Q. Okay. And do you know -- and if you don't simply say so --

1 who was the agent that you were in contact with?

2 A. I -- I don't recall.

3 Q. You don't recall?

4 A. No.

5 Q. Okay.

6 Now, on the morning that -- Mr. Pimentel arrives that
7 evening, correct?

8 A. Yes, sir.

9 Q. That would have been July 22nd?

10 A. Yes, sir.

11 Q. Okay. And so you get a call sometime earlier in the day
12 that, in fact, he's on his way up there?

13 A. Correct.

14 Q. Okay. So now it's -- there's some kind of confirmation
15 that, indeed, he's up there to pick up some money?

16 A. Yes, sir.

17 Q. Okay. And you meet him at the hotel, at the Doubletree?

18 A. Yes, sir.

19 Q. Okay. And what type of telephone is he utilizing, if you
20 recall?

21 A. He had a cellular phone.

22 Q. Pardon me?

23 A. He had a cellular phone.

24 Q. Okay. And was it one of those push-to-talk phones?

25 A. That, I don't recall.

1 Q. Okay. When you say you were able to hear the
2 conversations, were you actually able to hear the conversations
3 that Mr. Pimentel was having with Mr. Martel and/or
4 Mr. Delgado?

5 A. In realtime?

6 Q. Yes.

7 A. No, sir.

8 Q. You could hear Mr. Pimentel, obviously, speaking, correct?

9 A. Yes.

10 Q. But you couldn't hear the voices on the other end speaking
11 to him in realtime?

12 A. No, sir.

13 Q. Was he recording those conversations?

14 A. Yes.

15 Q. Okay. And who gave him the recording device?

16 A. I believe Agent Plossell brought a recording device with
17 him.

18 Q. Okay. And he's with -- out of the Chicago office?

19 A. Yes, sir.

20 Q. Okay. And is it -- is it a fairly simple device to put on
21 a phone?

22 A. Yes, sir.

23 Q. And you would agree, would you not, Mr. McCabe, that in
24 these times it's easy to record conversations, is it not?

25 A. Depends on your level of technology. But, yes, it's not

1 very difficult.

2 Q. Yeah. Well, if you're a dinosaur like me, it's hard. But
3 most young people know how to record?

4 A. I would put myself in the dinosaur category also. But,
5 yes. It's --

6 Q. It's good to meet a fellow dinosaur.

7 But in any event younger people, with the technology
8 now, they can record from a cell phone, can't they?

9 A. Correct.

10 Q. Okay. And that, certainly with respect to law enforcement,
11 has helped law enforcement record conversations much easier
12 than they could in the past, correct?

13 A. Correct. As technology advances, yes.

14 Q. Sure. It makes it -- and years ago, it made it much more
15 difficult to record conversations, didn't it?

16 A. Correct.

17 Q. Okay. Now in the hotel room, you're not recording the
18 conversations Mr. Pimentel is having because he's got a
19 recording device on his phone, correct?

20 A. I don't recall whether we brought a recording device or --
21 I know they were recorded.

22 Q. Okay. They were recorded, because there was an attachment
23 on his phone, correct?

24 A. I -- that, I don't recall.

25 Q. Well, you said that one of your fellow agents brought a

1 device for him to record --

2 A. He did.

3 Q. -- conversations that he was having on -- "he," being
4 Mr. Pimentel -- on his phone?

5 A. Correct.

6 Q. Okay. But you don't recall whether any of you or fellow
7 agents were recording, using their cell phones or any other
8 technological device, the conversations that you-all were
9 having in the hotel room?

10 A. No. The conversation was strictly recording what was being
11 said on the phone.

12 Q. Okay. And then Mr. Pimentel would, in turn, tell you what
13 was being said to him, correct?

14 A. Correct.

15 Q. Okay. Now this Mr. Martel, whenever he is stopped after --
16 let me ask you this.

17 You didn't observe the actual handing of the bag to
18 Mr. Pimentel?

19 A. No, sir.

20 Q. Okay. And whenever Mr. Pimentel -- did he contact you by
21 phone to tell you that he had received the money?

22 A. We heard something over the body wire, and then we observed
23 him walk out of the foliage with the bag.

24 Q. Okay. Did you -- did any of you -- did you or your fellow
25 agents ever advise him to clear yourself, go into the mall

1 first and then come out?

2 A. No.

3 Q. Did not?

4 A. Did we advise him to go into the mall?

5 Q. Yeah. In other words, he picks up the money. Okay?

6 A. Correct.

7 Q. And now he all of a sudden disappears into the mall,
8 correct? Or do you know?

9 A. He never goes into the mall, no.

10 Q. He never goes into the mall?

11 A. Mr. Pimentel?

12 Q. Yes.

13 A. Not that I have knowledge of, no.

14 Q. And does he ever tell you or contact you or your fellow
15 agents and is advised, Go into the mall and clear yourself
16 there first, and then meet us at the Doubletree?

17 A. I don't recall that conversation, no.

18 Q. Okay. Would that have been a significant conversation if
19 it had happened?

20 A. No. It would be -- we have done that in times where we
21 think that the -- and it may have been done without my
22 knowledge, because he may have contacted Agent Plossell.

23 Q. Okay.

24 A. Agent Plossell might have told him, Hey, listen. Maybe you
25 need to clear yourself before you come back.

1 Q. Okay.

2 A. Especially being that Martel appeared to be surveillance
3 conscious.

4 Q. Okay. Did you -- were you surprised when you saw him
5 coming out of the foliage?

6 A. I did.

7 Q. Okay. In other words, he kind of disappeared for a while
8 after there was a -- after the body mike recorded that he had
9 picked up the money?

10 A. It was -- it was very short.

11 Q. Okay. And then all of a sudden he disappears and you guys
12 don't know where he's at?

13 A. Well, we didn't know where he was at because we -- he was
14 out of our view because of the foliage.

15 Q. Right. And then all of a sudden he comes out of the
16 foliage, and you-all meet up back at the Doubletree?

17 A. Correct.

18 Q. Is -- Mr. Martel, he is stopped by a Chicago police marked
19 unit, correct?

20 A. No. He's stopped by one of the task force officers.

21 Q. Oh, he is?

22 A. Yes, sir.

23 Q. Okay. So the task force officer is in plain clothes,
24 correct?

25 A. Yes.

1 Q. Okay. And the vehicle -- the license plate comes up not
2 matching that vehicle, correct?

3 A. I don't recall the circumstances. I remember being told by
4 the task force officer, when they were following him, that that
5 plate was stolen.

6 Q. Okay. So then you gave the authorization to go ahead and
7 stop him. And they arrested him, did they not?

8 A. He was detained. I don't -- I don't know what the further
9 charges was. As I recall, the plate was recovered, but never
10 taken out of the system.

11 Q. Okay. Well, it was recovered, but never taken out of the
12 system, meaning?

13 A. So the car was listed as stolen at some point. But when it
14 was recovered, it was never taken out of the NCIC system, so it
15 maint- -- it was -- remained in the system as stolen.

16 Q. Okay. So in answer to my question, you don't know whether
17 he, Martel, was arrested or not, do you?

18 A. He -- he was detained and taken back to a station, to the
19 police station.

20 Q. Okay.

21 A. But what happened to him beyond that, I don't recall, no.

22 Q. Okay. So in other words, there's a period of time where,
23 after he allegedly drops off this money, he now drives off and
24 he is stopped within about five minutes, correct?

25 A. As I recall, it was a little bit longer, maybe 15. But...

McCabe - Cross by Mr. Esper

1 Q. But 15 minutes later he's stopped?

2 A. Yes, sir.

3 Q. Okay. And now he's not only stopped, he's now detained and
4 taken to a PD substation?

5 A. Correct.

6 Q. Would that have been in Oak Forest?

7 A. I -- I don't recall what jurisdiction they were in when
8 they stopped him.

9 Q. Okay. Am I pronouncing it correctly? Is it O-A-K, Oak,
10 Forest?

11 A. Yes.

12 Q. Okay. It's not Old Forest?

13 A. No, it's -- there's an Oak Forest.

14 Q. Pardon me?

15 A. There is an Oak Forest, yeah. I don't know of an Old
16 Forest. So --

17 Q. Okay.

18 A. -- it would be Oak Forest.

19 Q. Okay. So in other words, when he is -- when Mr. Martel is
20 detained and taken to the police station, he's not able to make
21 a phone call, is he?

22 A. Not that I know of, no.

23 Q. Okay. And you don't know how long he was detained at the
24 police station, do you?

25 A. I do not.

1 Q. Okay. And you don't know whether or not, before he's
2 stopped by the task force officer, he gets on the phone and
3 tells -- calls somebody to tell them he's being -- the cops are
4 on him?

5 A. I -- yeah. I don't know that he did or not.

6 Q. But nevertheless there is a phone call, according to
7 Mr. Pimentel, that after he gets to the hotel room, supposedly
8 Mr. Delgado tells him there was some sort of mishap with
9 Mr. Martel?

10 A. Correct. In one of the -- in one of the phone
11 conversations Mr. Delgado asks Victor what -- what went on.

12 Q. Okay. And that's within about, what, within an hour after
13 all this happened?

14 A. I believe that phone call took place around 2:00 in the
15 afternoon. So...

16 Q. Within a few hours?

17 A. Within a few hours.

18 Q. Now, the next day -- in other words, you wait the whole day
19 for another phone call to pick up, allegedly, another \$50,000?

20 A. Yes, sir.

21 Q. And it never happens?

22 A. Correct.

23 Q. Okay. And you testified that you don't know who Rafa Solis
24 is.

25 A. I did not at the time, no.

1 Q. Okay. And of course, living in the Chicago area, Chicago
2 has a large Hispanic population, does it not?

3 A. It does.

4 Q. And Solis is a fairly common name in Chicago for Hispanics?

5 A. It is.

6 Q. Okay. So to hear the name Rafa Solis, or Rafael Solis, is
7 not uncommon in law enforcement circles, is it?

8 A. The surname Solis is not. Rafa Solis is...

9 Q. Okay. But you had no idea that Rafael Solis could have
10 been Agent Ascencio?

11 A. I did not know that at the time.

12 Q. Okay. Now, Mr. Pimentel spends the night -- that night in
13 the same Doubletree Hotel?

14 A. Yes, sir.

15 Q. Doesn't come back to El Paso?

16 A. Not that evening, no.

17 Q. Okay. That afternoon is when he goes up to Racine,
18 Wisconsin?

19 A. Yes, sir.

20 Q. You don't go with him?

21 A. No, sir.

22 Q. Okay. And he goes up there because he's attempting to
23 del- -- to deposit money into a bank account?

24 A. Correct.

25 Q. Okay. And you've seen this \$45,000, haven't you?

1 A. The \$50,000 that we --

2 Q. The \$50,000, I'm sorry.

3 A. That we -- yes.

4 Q. Okay. You counted it?

5 A. Yes, sir.

6 Q. Okay. Now, let me get to the -- before I get to the
7 deposit procedure, or the attempted deposit, does Mr. Pimentel
8 try to take 2,000 bucks out of the money?

9 A. Oh. We -- he had made us aware that he was supposed to
10 receive \$2,000.

11 Q. Okay. So --

12 A. He doesn't attempt to take it. We take it, again in
13 consultation with El Paso agents, that we were going to seize
14 that money up in Chicago.

15 Q. Okay. In other words, when you're counting the money he
16 tells you, Hey, I'm supposed to get 2,000 bucks?

17 A. No, not -- not in the case -- not in the sense that he
18 thought he was going to receive \$2,000 there.

19 Q. He thought he was going to get \$2,000 when he was there in
20 Chicago?

21 A. No. My understanding, through El Paso, was he was aware
22 that he was supposed to get paid. But he was aware that that
23 money was going to be seized by law enforcement.

24 Q. Okay. And did somebody give him money to go buy a ticket
25 to come back to El Paso?

1 A. I don't -- I don't rem- -- I don't recall how his travel
2 was paid for.

3 Q. Okay. You-all didn't give him any money?

4 A. No, sir.

5 Q. The \$5,000, that was deposited into an ICE account?

6 A. Yes, sir.

7 Q. As well as the 45,000?

8 A. Into a separate account.

9 Q. Okay. 5,000 was taken out and 45,000 was put into a
10 separate account?

11 A. Correct.

12 Q. Were they both wire transferred to ICE in El Paso?

13 A. No. The \$5,000 was seized in Chicago, and the \$45,000 was
14 wire transferred from an ICE account to an El Paso account.

15 Q. What happened with the 5,000?

16 A. It was seized by Chicago.

17 Q. Okay. That money was not used to give to Mr. Pimentel at
18 all?

19 A. Not that I'm aware of, no.

20 Q. Okay. Now, you have -- do you -- as a law enforcement
21 officer, are you engaged in banking deposits or investigations
22 involving structuring?

23 A. I am. At times, yes, I am.

24 Q. And this particular transaction that's -- it's in a
25 Hollister bag. Walking into a bank with 45,000 bucks in a

1 Hollister bag would certainly arouse a lot of suspicion, would
2 it not?

3 A. It would.

4 Q. Okay. And have you, in the past, received phone calls from
5 banks saying, Hey, there's some guy trying to deposit a bunch
6 of cash into this account, and he looks suspicious?

7 A. Not typically. What the banks would usually do is do a
8 report and send it off to law enforcement.

9 Q. Okay. But the plan was was for Mr. Pimentel to take this
10 Hollister bag with 45,000 bucks in cash and deposit it into an
11 account?

12 A. If you're asking us if we brought the money up there in a
13 Hollister bag, that's not how we did it. We --

14 Q. No. What I'm asking --

15 A. We packaged it different and brought it up there.

16 Q. When he went up to Racine, Wisconsin, with the fellow
17 agents --

18 A. Yes.

19 Q. -- the plan was, he was going to walk into a Wells Fargo
20 bank and deposit 45,000 in cash into an account?

21 A. Whose plan?

22 Q. Pardon me?

23 A. Whose plan was that?

24 Q. No. When Mr. Pimentel went to -- you said you went to
25 Racine, Wisconsin, didn't you?

1 A. We did. We transported him up there.

2 Q. Okay. And you transported him up there. Was it his
3 intention -- was it your all's intention to allow him to
4 deposit that money into an account?

5 A. Correct.

6 Q. Okay. And that didn't happen, did it?

7 A. It did not.

8 Q. Okay. And do you know why it didn't happen?

9 A. He was -- I believe he was told that he couldn't deposit --

10 Q. Victor?

11 A. The bank told him he was not allowed to deposit that money
12 to an account without authorization from the account holder.

13 Q. Okay. And did you get clearance from ICE El Paso that that
14 was okay for him to do that?

15 A. I'm sure we had a conversation that that's how it was going
16 to happen.

17 Q. Okay.

18 MR. ESPER: May I have just one moment, Your Honor?

19 THE COURT: You may.

20 BY MR. ESPER:

21 Q. Mr. McCabe, Mr. Pimentel, did he tell -- did he use the
22 word "mishap" when he was explaining? Subsequent to a
23 conversation he had with Mr. Delgado, was he the one that used
24 the word "mishap"?

25 A. I don't recall "mishap." As I -- as I recall, the

1 conversation back then was, when he had a conversation with
2 Mr. Delgado, Mr. Delgado said, What happened? Words to the
3 effect, What happened?

4 And Victor explained, you know, that we had -- what
5 had happened, that they -- that initially they were set up to
6 do it at McDonald's. That Martel felt that he was -- the
7 parking lot was being watched, and asked him to go over to the
8 mall parking lot to do the -- the exchange, or the transaction.

9 Q. So that's the quote, mishap, that Mr. Pimentel is referring
10 to in explaining it to you?

11 A. Correct.

12 Q. He doesn't know anything about Mr. Martel being stopped 15
13 minutes later and then taken to the substation?

14 A. No.

15 Q. Okay. Nor does he infer that Mr. Delgado knows about
16 Mr. Martel being arrested either?

17 A. I don't know how Mr.- --

18 Q. Okay. It's -- so it's clear that mishap that they're
19 talking about is they're supposed to get the money there at the
20 McDonald's, Martel feels that there's law enforcement in the
21 area.

22 MS. KANOF: Your Honor, I'm going to object as to what
23 Mr. Delgado thought about the word "mishap," because we don't
24 know what communication Mr. Delgado had with people that knew.

25 THE COURT: Rephrase your question.

1 MR. ESPER: I'll rephrase the question.

2 BY MR. ESPER:

3 Q. Mr. Pimentel is explaining the mishap to you as being what
4 occurred prior to the pickup, correct? That there was -- that
5 Martel felt that there was law enforcement in the area?

6 A. Yes. He explained the conversation that he had with
7 Martel.

8 Q. Okay. And Martel is telling him that he thinks there's law
9 enforcement in the area?

10 A. Correct.

11 Q. And in fact, there was?

12 A. Yes, there was.

13 Q. Okay. And so now Martel directs Pimentel to start walking
14 towards the mail, and that's when you lose sight of what
15 happens?

16 A. He -- all he does is -- it's just crossing the street.
17 That's all it is. It's right across the street.

18 Q. And what's what he is telling Mr. Delgado on the phone as
19 to what the mishap was, correct?

20 A. Well, he explained the whole process, that --

21 Q. Okay. "He," being Mr. Pimentel, doesn't know anything
22 about Martel subsequently being arrested in a stolen car and
23 taken to the police station, any of that?

24 A. Not to my knowledge, no. We never shared any of that with
25 him.

1 MR. ESPER: That's all I have, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. KANOF:

4 Q. Quickly, Agent McCabe.

5 Do you know whether one of your officers might have
6 told Mr. Pimentel at some point in time that that happened?

7 MR. ESPER: Objection, Your Honor, speculation.

8 THE COURT: Does he know?

9 BY MS. KANOF:

10 Q. Do you know?

11 MS. KANOF: I asked if he knew.

12 MR. ESPER: He might have known.

13 THE COURT: No, no, no. Does he know?

14 BY MS. KANOF:

15 Q. Do you know whether or not one of your other agents might
16 have told Mr. Pimentel?

17 A. I don't know that we -- that we told him that. I don't
18 know.

19 Q. Okay. You didn't go to the bank in Racine?

20 A. I did not. Shortly after, he would have made the call at
21 around 2:30 or so, I would have taken myself out of it because
22 it was clear at that point that there was going to be no more
23 operational things; that it was clearly a -- an operation of
24 getting the money up to Wisconsin to deposit, which did not --
25 did not need my supervision. So...

1 Q. What is walking money? Walking?

2 A. Letting it go.

3 Q. Okay. Could -- did -- is this a law enforcement term?

4 A. Yes.

5 Q. And do you sometimes walk money?

6 A. Yes. We'll -- we'll let the -- we'll let the money go
7 through as planned. Typically, it's done -- we do -- we've
8 done a lot of it in Chicago, where we would have money
9 transferred into bank accounts down in Mexico, to identify the
10 accounts that it will go into.

11 Q. So it isn't unusual, then, to allow money to be deposited
12 in an account that you don't control?

13 A. No. We do it -- we do it quite often.

14 Q. Do you know whether or not El Paso asked Chicago to let the
15 money walk?

16 A. It was -- well, we were -- we were in consultation with
17 El Paso. It was agreed upon that if he could deposit that
18 money into this account at Wells Fargo that was okay.

19 Q. Okay. And it was okay that ICE no longer could control
20 that \$45,000?

21 A. Yes.

22 Q. That's part of a legitimate law enforcement investigation?

23 A. Yes, ma'am.

24 MS. KANOF: Pass the witness.

25 THE COURT: Mr. Esper?

Aguirre - Direct by Ms. Kanof

1 MR. ESPER: Nothing further, Your Honor.

2 THE COURT: Very well. I'm going to excuse the
3 witness unless you let me know why not.

4 MS. KANOF: Yes, Your Honor. Please.

5 THE COURT: You may be excused. You're free to go,
6 sir.

7 Call your next witness.

8 MS. KANOF: Gabe Aguirre.

9 (Witness duly sworn.)

10 THE WITNESS: I do.

11 THE COURT: You may proceed.

12 GABRIEL AGUIRRE, GOVERNMENT'S WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MS. KANOF:

15 Q. State your name, please.

16 A. Gabriel Aguirre.

17 Q. And how are you employed?

18 A. I'm a special agent with Homeland Security Investigations.

19 Q. Where are you from?

20 A. I'm from El Paso.

21 Q. What part of El Paso?

22 A. The Lower Valley.

23 Q. Okay. And what is your background and experience and
24 education?

25 A. I have a bachelor's degree from the University of Texas at

1 El Paso in Spanish. I was a teacher at Montwood High School,
2 taught Spanish, and I was also a soccer coach there. I was
3 there for a little bit over five years.

4 Q. I'm sorry. You need to speak up and a little bit clearer.

5 A. I was there for a little bit over five years.

6 Q. At Montwood High School?

7 A. Yes. And then I got employment with, back then, the
8 Customs Service, which is now Customs and Border Protection, as
9 an inspector at the ports of entry. I did that for a little
10 bit over five years as well.

11 And then in 2007 I got hired as a special agent with,
12 back then, Immigration and Customs Enforcement.

13 Q. And now Homeland Security Investigations?

14 A. Yes, ma'am.

15 Q. And what groups have you worked in here in El Paso with HSI
16 and ICE?

17 A. When I started with HSI, I was assigned to a narcotics
18 conspiracy group, which we did narcotics investigations.

19 And then in 2009, I was -- I was transferred over to a
20 work site group, which is an immigration -- a group that
21 specializes in immigration investigations.

22 And then in 2011, I was transferred into the
23 counter-proliferation investigations group.

24 Q. Okay. In September of 2007, what group were you in?

25 A. I was not in a group yet.

1 Q. Okay.

2 A. I was at the academy.

3 Q. You were -- I'm sorry. In September of 2007, you were
4 still at the academy?

5 A. Yes, ma'am.

6 Q. When do you start working in -- as an agent?

7 A. I was -- I came back to El Paso. I started working in -- I
8 believe December 5th of 2007.

9 Q. So by the time that you started working, Marco Delgado and
10 Victor Pimentel had already done the Atlanta million dollars?

11 A. Yes.

12 Q. And were you assigned any portion of that case, or how did
13 you come to know about the case?

14 A. I came to know about the case because in July of 2008, I
15 was contacted by my supervisor to -- who instructed me to call
16 a specific number that he gave me and make contact with the
17 individual who was later identified as Victor Pimentel.

18 Q. Okay. And did you make that call?

19 A. Yes, I did.

20 Q. Do you remember when it was?

21 A. Yes. It was on July 22nd, 2008.

22 Q. And on July 22nd, 2008, did you speak with Victor Pimentel?

23 A. Yes, I did.

24 Q. What did he tell you?

25 A. He told me that he was at the El Paso International Airport

1 about to board a flight to Chicago, where he was supposed to
2 pick up \$100,000 in cash, under the direction of Mr. Marco
3 Delgado.

4 Q. Okay. What did you do --

5 A. Well, he --

6 Q. -- after he told you that?

7 A. Well, he told me -- he also told me that he was supposed to
8 deposit that money at a Wells Fargo bank in Chicago under a
9 bank account number that Mr. Delgado had provided for him.

10 Q. Okay. And did he provide that bank account number for you
11 eventually?

12 A. Yes. Yes, he did.

13 Q. Okay. And did you review that bank account number with me?

14 A. Yes, I did.

15 Q. The bank account number that he provided you initially
16 was -- do you know whose bank account it was?

17 A. Yes. It was -- later, I was informed that it was -- it
18 was -- belonged to a female named Liliana Narvaez.

19 Q. Okay. I'm going to show you what's been marked as
20 Government's Exhibit Number 78.

21 And you actually wrote a report concerning this
22 conversation you had with Victor Pimentel in 2008, correct?

23 A. Yes, I did.

24 Q. On July 22nd, 2008.

25 And is that bank account number actually in your

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1 report?

2 A. Yes, it is.

3 Q. Okay. And drawing your attention to the exhibit, is the
4 number -- the bank account number -- sorry. Is the bank
5 account number located right there (indicating)?

6 A. I can't see anything.

7 MS. KANOF: Oh. Could we publish, Your Honor?

8 THE COURT: You may publish, yes.

9 A. Yes, it is.

10 BY MS. KANOF:

11 Q. And this -- the number reflected in Government's Exhibit
12 Number 78, is that 1356440196?

13 A. Yes, it is.

14 Q. And did I ask you to compare Government's Exhibit Number 78
15 to your report to see if it was the same number?

16 A. Yes, you did.

17 Q. Is that the bank account of Liliana -- how do you say her
18 last name?

19 A. Narvaez.

20 Q. Narvaez? Is that her bank account?

21 A. Yes, it is.

22 Q. And how did ICE obtain this bank account statement?

23 A. It was provided to me by Victor, Mr. Pimentel.

24 Q. Okay. No, the bank account statement, Government's Exhibit
25 Number 78. Was it subpoenaed?

1 A. Yes, it was.

2 Q. Okay. By the case agent, Josh Fry?

3 A. Yes. Yes.

4 Q. Okay. So -- and in addition to that have you interviewed
5 Liliana Narvaez, who verified that that was her bank account?

6 A. One of our agents did. I did not myself, but somebody did.

7 Q. Okay. Yeah. I meant the royal you --

8 A. Yes.

9 Q. -- in your -- okay.

10 And so he, at that very time, provided you with this
11 bank account number. And where did he say he got the number?

12 A. He said it was provided to him by Mr. Delgado.

13 Q. And he already had that number on the 22nd of June; is that
14 correct?

15 A. Whether -- he either had it -- yes, he said he did.

16 Q. Okay. What happened next?

17 A. We -- I tried -- I told him that we were not going to be
18 able to fly with him to provide protection or record any
19 conversations that he had, but that we would make contact with
20 some of our agents, HSI agents in Chicago, so that they could
21 pro- -- assist him with the money pickup.

22 Q. You know, I may have -- I may have misspoken about when
23 that number was provided to you.

24 He did provide a bank account number to you, correct?

25 A. Yes.

1 Q. And do you know which -- there were two bank account
2 numbers in your report. Do you know which one of the two he
3 provided before he went to Chicago?

4 A. Well, he said, when -- I didn't speak to him about the bank
5 account number after he came back from Chicago. And that was
6 the number that he said -- this number, the 135 number, was the
7 one that he said that was provided to him originally.

8 Q. Okay. And that was -- when he tried -- the number that he
9 used to try to deposit the funds in Racine, Wisconsin?

10 A. Yes.

11 Q. Okay. Now with regard to your conversations with him when
12 he was at the airport, what did you tell him?

13 A. We told him --

14 Q. The El Paso airport.

15 A. Yes. We told him to -- that we would make contact with our
16 agents in Chicago, and that they would assist him once he
17 landed in Chicago.

18 Q. Okay. And did you make the arrangements with the Chicago
19 SAC office to meet him, or did someone else make those
20 arrangements?

21 A. I did.

22 Q. Okay. What did you do?

23 A. I talked to Special Agent Michael Plossell, out of our
24 office in Chicago, and gave him the information: Victor
25 Pimentel is his name, his contact info. And I told him that he

1 was going to arrive in Chicago to make a money pickup of
2 \$100,000, and asked him if he could please assist with
3 recording any conversations that Victor had, and if he could
4 provide protection, also, during the money pickup as well.

5 Q. Okay. And when you -- normally, if you had had more
6 notice, would you have gone with him?

7 A. Yes, I would have.

8 Q. Okay. When he was in Chicago, did you try -- did your
9 office try to control what was going on in Chicago, or did you
10 just let SAC Chicago do it?

11 A. No, we let them do it.

12 Q. Okay. And at some point in time did your office have to
13 take an active role in the investigation, after the money had
14 been delivered in Chicago?

15 A. Yes, after he came back.

16 Q. Okay. What happened?

17 A. Well, before that, I was informed also by my supervisor
18 that Victor and Mr. Delgado had been apprehended a year --
19 almost a year before -- with a million dollars, and that
20 Mr. Delgado was cooperating with our agents in Atlanta.

21 So I called them, just to make sure that we were not
22 interfering in their investigation. I spoke to two other
23 agents, which informed me that this was not an investigation --
24 or this was not a money pickup that was being supervised by
25 them.

1 Q. Okay. So as soon -- when were you informed that Pimentel
2 and Delgado had been caught with a million dollars the
3 preceding year?

4 A. It was during the process of -- after I spoke to them, and
5 the process of speaking with Chicago as well.

6 Q. Okay. So by this time everybody was made aware. You
7 called Atlanta?

8 A. Yes, I did.

9 Q. When did you call Atlanta to find out whether or not this
10 was their deal?

11 A. I believe it was shortly after speaking with Mike Plossell
12 in Chicago.

13 Q. Okay. And as far as the interaction between the various
14 offices, if Atlanta was doing a deal with people that were
15 coming from El Paso, what would the rule have been?

16 A. We would not have been involved. Because we -- see,
17 Atlanta at that point, they would have coordinated any cover,
18 any protection for -- for whoever was picking up the money.
19 And they would, obviously, be recording the conversations. It
20 wouldn't be us.

21 Q. So it would have been Atlanta and Chicago --

22 A. Yes.

23 Q. -- and not El Paso and Chicago.

24 A. Correct.

25 Q. Is that correct?

1 Do you remember who you talked to in Atlanta when you
2 called them?

3 A. I spoke to Special Agent Alex Ascencio. And I also spoke
4 to Special Agent Jeff Walton.

5 Q. And they assured you that it wasn't their deal?

6 A. Yes, correct.

7 Q. Okay. What happened next?

8 A. Once again, Victor flew to Chicago, where he made contact
9 with Special Agent Plossell in Chicago, and they coordinated
10 the money pickup.

11 Q. Okay. Did Chicago keep you informed of what was happening
12 as it was happening?

13 A. Not every single detail. But yes, during intervals, they
14 would let me know what was occurring.

15 Q. Okay. At some point in time you did become involved again?

16 A. Yes.

17 Q. When was that?

18 A. It was after Victor arrived in El Paso on July 24th.

19 Q. And so he came back, basically, the day after the money
20 delivery?

21 A. Yes, correct.

22 Q. Did you know when he was coming back?

23 A. Yes. I was informed by Special Agent Plossell.

24 Q. What did you do?

25 A. We -- he was -- we took him into the office, HSI office

1 here in El Paso, and we interviewed him as to the events that
2 had occurred not only during the money pickup in Chicago, but
3 prior -- what led to the money pickup in Chicago.

4 Q. Okay. And what -- you interviewed Victor?

5 A. Yes, I did.

6 Q. Did you bring him into the offices on the 24th?

7 A. Yes, I did.

8 Q. And you debriefed him, and he gave you the information?

9 A. Yes, he did.

10 Q. And because he hadn't had a lot of time with you before,
11 did he give you the background information?

12 A. Yes, he did.

13 Q. Did he tell you whether or not he had attempted to call
14 Atlanta to tell them about this transaction?

15 A. Yes, he did.

16 Q. Did he tell you he tried more than once?

17 A. Yes, he did.

18 Q. Did he tell you he began trying as soon as Mr. Delgado had
19 contacted him to do this?

20 A. That's what he stated, yes.

21 Q. Okay. And did he tell you he had no luck?

22 A. Excuse me?

23 Q. Did he tell you he had no luck?

24 A. Well, he said he spoke to Special Agent Justice, out of
25 Atlanta, and told him that there was a scheme to go back to

1 Chicago and pick up money.

2 And that Special Agent Justice told him that he would
3 get back to him, but that he never did.

4 Q. Okay. And so he called El Paso?

5 A. Yes.

6 Q. And El Paso responded?

7 A. Yes.

8 Q. When -- after he got back, did you make a decision to do
9 something about the \$45,000 that was sitting in the ICE account
10 in Chicago?

11 A. Yes.

12 Q. What?

13 A. The following day, on the 25th, there was conversation
14 when -- when Victor came back to the office on the 24th, he
15 called Mr. Delgado and told him that he -- because he had not
16 been able to deposit the money, he had rented a vehicle and
17 would arrive in El Paso on the 25th, approximately 9:00 or
18 10:00 in the afternoon.

19 Q. So even though he was already in El Paso, he -- you had him
20 tell Delgado that he would come the next day?

21 A. Yes, correct.

22 Q. And did you -- did Victor tell Mr. Delgado that he was
23 driving?

24 A. Yes. That's correct.

25 Q. Okay. Go on. What happened next?

1 A. So the following day, on the 25th, Victor called
2 Mr. Delgado again and told him that he was going to arrive in
3 El Paso, to which Mr. Delgado told him not to arrive before he
4 called him, and that they would transfer the money in a
5 restaurant here in El Paso.

6 Q. Okay.

7 A. And later on that afternoon, the 25th, Victor called him
8 again and told him that he was here in El Paso, to which
9 Mr. Delgado told him not to -- the money transfer would not
10 occur, for him to keep the money, and that he would have him
11 deposit the money the following day, on the 25th -- on the
12 26th, I'm sorry -- at a Wells Fargo bank under the account
13 number -- the second account number that he had provided to
14 Victor.

15 Q. And that account number also appears in your report; is
16 that correct?

17 A. Yes, it does.

18 Q. Where did you get that account number?

19 A. From Victor.

20 Q. And displaying Government's Exhibit Number 79 -- publish,
21 please, Number 79. Oops. No, it should be Number 80.

22 Government's Exhibit Number 77.

23 Okay. Did I have you review your report for a bank
24 account number that appears on Government's Exhibit Number 77?

25 A. Yes, you did.

1 Q. And is that the Delgado & Associates IOLTA account?

2 A. Yes, it is.

3 Q. Do you know what an IOLTA account is?

4 A. You had explained to it to me. But...

5 Q. Okay. Don't say what I said.

6 A. Okay.

7 Q. And -- but the address is 7362 Remcon Circle, in El Paso?

8 A. That's what it says here, yes.

9 Q. Okay. And the number that -- when -- when Victor came back
10 to El Paso, he already had that number?

11 A. Yes, he did.

12 Q. And you -- you have -- and you wrote it in your report,
13 correct?

14 A. Yes, I did.

15 Q. Back in July of 2008, correct?

16 Whenever you wrote the report?

17 A. Yes. But it was in 2008, yes.

18 Q. You don't write the report the same day you get the
19 information, right?

20 A. Yes.

21 Q. You write them when you have time, right?

22 A. Correct.

23 Q. And -- but the number that's in your report, did I ask you
24 to -- to see whether or not it's the same number that appears
25 on the Delgado & Associates IOLTA account from Wells Fargo bank

1 in Exhibit 77?

2 A. Yes, you did.

3 Q. Does it?

4 A. Uh-huh.

5 Q. Same number?

6 A. Yes, ma'am.

7 Q. Okay. So what did you do with the money, now?

8 A. On the 26th, the morning of the 26th, Victor called
9 Mr. Delgado once again.

10 And Mr. Delgado instructed him to deposit the money at
11 the Wells Fargo bank that's located on Mesa.

12 Victor was escorted with the money. And he, indeed,
13 deposited the money in that account number. And he brought us
14 a receipt stating -- receipt, stating that he had, indeed,
15 deposited the money.

16 Afterwards, Victor called Mr. Delgado, and he told him
17 that they were going to meet at the Pastry Chef cafe here on
18 the west side in El Paso.

19 Q. The Pastry Chef?

20 A. Yes.

21 Q. Off Shadow Mountain and North Mesa?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. And once they got there, Mr. Delgado suggested that they
25 move to the Starbucks, across the street on Mesa, because he

1 suspected that people at the cafe were agents.

2 Once they moved, they discussed the money pickup.

3 Mr. Delgado asked Victor if he was comfortable depositing more
4 money, and Victor said yes, and further money pickups were also
5 discussed.

6 Q. Okay. What's walking money?

7 A. Letting the money -- not seizing the money by a government
8 agency.

9 Q. What's the purpose of walking the money?

10 A. To further the investigation, with the hopes of maybe later
11 picking up more money.

12 Q. Who makes the decision of whether or not to walk money?

13 A. Normally, a group supervisor would.

14 Q. And did your group supervisor concur in the decision to
15 walk the \$45,000?

16 A. Yes, he did.

17 Q. Okay. At that point in time, did you have any other --
18 engage in any other transactions with Victor Pimentel?

19 A. Yes. We gave him a recording device so that he could
20 record any future conversations with Mr. Delgado, which he did.
21 But the recordings were not audible, but they had several other
22 meetings.

23 Q. What do you mean they were not audible?

24 A. You could not listen to the recordings. Either there was
25 too much background noise or Mr. Delgado was speaking in more

1 of a whisper.

2 Q. Have you had an opportunity to view, as part of your
3 investigation, the -- the controlled delivery stop of when
4 Mr. Delgado was caught with the money?

5 A. Yes.

6 Q. And a lot of it's inaudible?

7 A. Yes.

8 Q. It's not a perfect world for law enforcement when they wire
9 people up?

10 A. Well --

11 Q. Okay. In fact, it doesn't work as often as it works,
12 correct?

13 A. Exactly.

14 Q. With regard to -- you said he had a couple of other
15 meetings with Mr. Delgado; is that correct?

16 A. Yes, he did.

17 Q. And did anything come of those?

18 A. No. Basically the meetings were to discuss, once again,
19 future money pickups. The only thing was that in one of the
20 meetings Mr. Delgado was instructing Victor on what to say if
21 he was detained with the money coming back from anywhere they
22 had picked up money, saying that if he --

23 Q. Not -- not Chicago or Atlanta, but in the future?

24 A. In the future, yes.

25 Q. Okay. And what did Mr. Delgado tell Victor?

1 A. Told him that if he was detained by law enforcement
2 officers to not consent to a search of a vehicle, and to let
3 them know that he was being represented by an attorney in
4 El Paso, including that Mr. Delgado wanted to set up a meeting
5 with one of the attorneys so that they could get instruction on
6 how to justify the large sums of money that was being deposited
7 in the bank accounts.

8 Q. Okay. Who was that attorney?

9 A. I believe it's Gary Hill.

10 Q. Do you know whether or not that meeting ever occurred?

11 A. No. According to Victor, Mr. Delgado told him that they
12 had scheduled a date, but that Mr. Hill was out of the city,
13 and so the meeting never actually -- it got postponed.

14 Q. Okay. Did basically the case, again, fizzle?

15 A. Yes.

16 Q. Even though you had walked \$45,000?

17 A. Yes.

18 Q. On December 3rd of 2008, did you have contact with -- or
19 somewhere around that time -- with Victor Pimentel again?

20 A. Yes, I did.

21 Q. How did that occur?

22 A. He called me and informed me that there was a possible
23 threat to the life of Mr. Delgado.

24 So we brought Victor over to the HSI office in El Paso
25 and asked for the details of the threat.

1 And he told us that sometime in October of '08 Lilian
2 de la Concha had called him and inquired as to the health of
3 Mr. Delgado, because he had told her that he was sick, that he
4 had cancer.

5 Victor proceeded to tell Lilian de la Concha that not
6 only was Mr. Delgado not sick, but that he had lied to her
7 about several other matters as well.

8 Q. Okay. And what happened next?

9 A. He said that two days later Lilian de la Concha called
10 Victor again and instructed him to pick her up at the Juárez
11 Mexico, airport, which he did. He brought her over to El Paso
12 and then subsequently dropped her off at a hotel here in
13 El Paso.

14 The following morning he called -- Lilian de la Concha
15 called Victor, and he picked her up. And she wanted him to
16 drive her to Mr. Delgado's home address, to his business
17 address, and to the home of his ex-wife, which he did.

18 And after they drove to these places, Lilian de la
19 Concha made a telephone call to an unknown male in Mexico and
20 relayed the information that Victor had just given to her, and
21 had also told -- that Lilian de la Concha also told that male
22 that she had deposited a million dollars at Mr. Delgado's Wells
23 Fargo bank account for American visas.

24 Q. Okay. There was another scam dealing with American visas,
25 correct?

1 A. Yes.

2 Q. And did Mr. Pimentel tell you that de la Concha indicated
3 that a million dollars had been deposited in Mr. Delgado's
4 account to bribe an ambassador?

5 MR. VELARDE: Your Honor, I'm going to -- I'm going to
6 object to any questions concerning this matter. We have not
7 been noticed.

8 MS. KANOF: It explains the \$2 million, Judge, that's
9 owed to him.

10 THE COURT: I'll sustain the objection.

11 MS. KANOF: Okay.

12 BY MS. KANOF:

13 Q. So you debriefed Victor Pimentel.

14 And do you have an obligation to determine whether
15 a -- whether a threat is credible?

16 A. Yes, we do.

17 Q. What does that mean, "credible"?

18 A. To see if the threat actually had been -- had come to
19 fruition.

20 Q. Did you make that determination after --

21 A. Yes.

22 Q. -- Mr. Pimentel --

23 A. Yes, we did.

24 Q. And then if you do make a determination that a threat is
25 credible, do you have rules, regulations, that require you to

1 do something about it?

2 A. Yes.

3 Q. What do you have to do?

4 A. We have to let the person -- the subject of the threat,
5 notify them that there is a threat.

6 Q. Okay. Even if it messes up an investigation?

7 A. Yes.

8 Q. Safety is your primary concern?

9 A. Correct.

10 Q. So what did you do on December 3rd regarding your
11 obligation because of the credible threat?

12 A. We tried to make contact with Mr. Delgado, which -- with
13 the assistance of our agents, HSI agents in Atlanta, we were
14 able to. Mr. Delgado arrived at our office.

15 Q. Why did you need Atlanta's assistance to call Mr. Delgado
16 in El Paso?

17 A. Because he was not answering his phone.

18 Q. Okay.

19 A. So eventually, our agents in Atlanta were able to get ahold
20 of him. He drove to the office here in El Paso, where he was
21 informed that there was a possible threat to his life from a
22 drug cartel.

23 And Mr. Delgado wanted to know why anybody would want
24 to kill him.

25 And he was informed that a drug cartel wanted to

1 recover \$2,050,000 from him.

2 And he said that he did not know why he -- or who he
3 owed \$2,050,000 to. He said the only money that he was aware
4 that he could possibly owe was his share of the million dollars
5 that was seized by our agency a year prior, which amounted to
6 \$200,000.

7 Q. In fact, when -- when you informed him that the car- -- a
8 cartel thought he owed them \$2,050,000, did you name the
9 cartel?

10 A. Yes.

11 Q. Okay. And did -- and it was actually not *Milenio*, but it
12 was actually the name of an individual?

13 A. Yes.

14 Q. That's the head of the cartel, correct?

15 A. Yes.

16 Q. And did Mr. Delgado say, I don't know what you're talking
17 about?

18 A. Yes. Once again, he was stating that he -- the only money
19 that he thought that he might owe was his share of the million
20 dollars that was seized the year before.

21 Q. But did he question that the money was owed to a cartel?

22 A. No.

23 Q. Okay. What happened next?

24 A. He wanted to know what he could do. Because -- since he
25 believed this threat as well. And he asked us what he could do

1 to resolve the problem.

2 And we told him that we could not tell him what to do.
3 The only thing that we could tell him is that normally in these
4 situations people tend to move out of the city.

5 But that knowing that Mr. Delgado had prior --
6 previously worked with our agents in Atlanta, we suggested that
7 he make contact with them, which we did there at the office.

8 And he was on a speaker phone with our office -- with
9 other agents in El Paso and three agents out of our office in
10 Atlanta.

11 Q. And did SAC Atlanta -- do you remember who the agents were
12 in Atlanta?

13 A. Yes. Group supervisor Bryan Ramsey, Special Agent Jeff
14 Walton, and Special Agent Alex Ascencio.

15 Q. And all of you from Atlanta and El Paso at ICE participated
16 in this conference call?

17 A. Yes, we did.

18 Q. And did Mr. Delgado also participate in the conference
19 call?

20 A. Yes, he did.

21 Q. Okay. Did ICE Atlanta ask Mr. Del- -- or tell
22 Mr. Delgado -- or try to talk to him about the Chicago
23 \$100,000?

24 A. Yeah, it was brought up.

25 Q. And initially, how did Mr. Delgado respond?

1 A. He stated that he did not know that Victor was in Chicago
2 to pick up money. That he did not know there was an operation
3 to pick up money in Chicago. And that he did not know how
4 Victor had arrived in Chicago.

5 Q. So because you walked the \$45,000, Mr. Delgado was not
6 arrested, correct?

7 A. Yes.

8 Q. And was never made aware that his phone calls with Victor
9 had been taped?

10 A. No, he was not aware.

11 Q. So he initially denies knowing anything about Chicago,
12 correct?

13 A. Correct.

14 Q. Did the agents in Atlanta persist?

15 A. Yes, they did.

16 Q. And what happened next?

17 A. Eventually, after the conversation was over with the agents
18 in Atlanta, he admitted to us, just the agents in El Paso, that
19 he was aware that -- he was aware that Victor had flown to
20 Chicago to pick up money, and that subsequently \$45,000 had
21 been placed in his bank account, and that he had already spent
22 that money, and that that transaction was done without the
23 knowledge of our agents.

24 Q. He admitted that transaction was done without the knowledge
25 of ICE?

1 A. Yes.

2 Q. Did he tell you that he tried to contact ICE to tell them
3 it was going to happen?

4 A. No. He stated that -- actually, that the whole money
5 pickup had been under the direction of Atlanta, which we knew
6 wasn't true, because we had talked to the agents. Plus, we
7 were on the speaker phone previously with them.

8 Q. Okay. Initially, when he was -- when -- when he -- okay.

9 First he denied it, then he admitted it. And when he
10 admitted it, he said that he was doing it for SAC Atlanta?

11 A. Well, it was during the course of the interview. I don't
12 recall whether he admitted it first or what happened.

13 But initially, when we were on the phone, on the
14 speaker phone, he said -- with Atlanta, he said, No, I don't
15 know why Victor was out there.

16 And then he admitted that he had done it, that they
17 had deposited the 45,000. But during the conversation, once
18 again, he had mentioned that it was under the direction of
19 Atlanta. But subsequently he stated no, it was -- that he had
20 done it without the knowledge of the agents.

21 Q. Okay. And talking to the agents in Atlanta, did -- when he
22 said -- was -- were there agents in Atlanta on the phone when
23 he said, I did it with the knowledge of the agents in Atlanta?

24 A. No, I don't believe so.

25 Q. So it was after you hung up from Atlanta that he said that

1 to you, correct?

2 A. Yes.

3 Q. And then he took that back as well?

4 A. Yes.

5 Q. And ultimately admitted that he did it without the agents'
6 knowledge; is that correct?

7 A. Correct.

8 Q. What else did he tell you?

9 A. Well, he -- after that, he -- we -- once again, we spoke
10 with Lilian de la Concha. She was on the speaker phone. And
11 he informed her that there was a threat to his life, and that
12 he was moving from El Paso.

13 And then he went on to explain about project *Mundial*
14 which was a -- *Mundial*, according to Mr. Delgado, is an
15 insurance company that was trying to sell insurance to people
16 who -- in Mexico, who obtained nonimmigrant visas, and the
17 insurance would cover the cost of transportation and funeral
18 services in case they were here and happened to pass away while
19 visiting the United States.

20 Q. Did he tell you that he was in meetings with the American
21 ambassador in Mexico and a representative of *Mundial* for the
22 feasibility of that implementation?

23 A. Yes, I believe so.

24 Q. Was he able to prove it?

25 A. No. And we didn't pursue it either.

1 Q. Okay.

2 Before he started telling you about *Mundial*, back when
3 you talked about the \$45,000 that was deposited in his account,
4 did he tell you what the purpose of the trip to get that money
5 was? Did he tell you that it was standing on its own, or that
6 it was a trial run?

7 A. Yes. He said it was a trial run, I believe, to eventually
8 be able to transport, I believe, \$3 million into Mexico.

9 Q. Okay. On the next day, December 4th, did you interview
10 Pimentel again?

11 A. Yes, I did.

12 Q. Okay. And after you informed -- and that was basically to
13 verify the information on the threat; is that correct?

14 A. Correct.

15 Q. Okay. And what did you tell Mr. Delgado to do because of
16 the threat?

17 A. Well, the day before, on the 3rd, once again we -- he asked
18 us what to do.

19 And we told him we could not tell him to do anything.
20 But normally in these cases, people usually move out of the
21 city.

22 Q. Okay. Did you hear from him again?

23 A. Excuse me?

24 Q. Did you hear from him again?

25 A. Yes. I heard from him again approximately -- I believe

1 it's sometime in the summer of 2010. He called me and said
2 that he was afraid, because he had seen a vehicle parked
3 outside of Liliana Narvaez's house, a black pickup truck, I
4 believe. And the same pickup truck had been parked in front of
5 his mother's house, so he was afraid for his safety.

6 And an agent and myself from this office tried to make
7 contact with him just to verify his safety. And we went over
8 to his mother's house, and we were not able to get ahold of
9 her.

10 We spoke to the mother, and she wasn't able to provide
11 any information.

12 But later on that afternoon we spoke to Mr. Delgado
13 once more and just told him, I think -- I believe if he feared
14 for his safety, to make sure he called 911.

15 MS. KANOF: Okay. Pass the witness.

16 Wait.

17 BY MS. KANOF:

18 Q. Oh. The Mr. Delgado that you were talking to, is he here
19 in the courtroom?

20 A. Yes, he is.

21 Q. Identify him, please.

22 A. He is sitting next to defense counsel with a suit and a
23 green tie. A black or blue suit with a green tie.

24 MS. KANOF: Let the record reflect the witness has
25 identified the Defendant.

1 THE COURT: The record will so reflect.

2 CROSS-EXAMINATION

3 BY MR. VELARDE:

4 Q. Agent Aguirre, good afternoon.

5 A. Good afternoon.

6 Q. Agent, how did you verify the threat that Victor Pimentel
7 revealed to you?

8 A. We -- basically what we do, if we think the threat is
9 viable, then we take action. We never talked to anybody else,
10 but we just took the information that Mr. Pimentel gave us.

11 Q. The threat that was made in this -- that was related to you
12 by Mr. Pimentel -- occurred in October of 2008; is that
13 correct?

14 A. That's when the conversations were --

15 Q. That's right.

16 A. -- with Ms. Lilian de la Concha, but we were not aware of
17 it.

18 Q. And then she calls your office in December 2008, some two
19 months later, right?

20 A. Yes.

21 Q. So how did you verify the threat, if it's already two
22 months late?

23 A. Well, the reason was -- it's in my report -- that on
24 December the 2nd, the day before, Lilian de la Concha had
25 called, again, Victor, and let him know that there was a threat

1 to Mr. Delgado's life by a drug cartel.

2 And he called us the following day.

3 Q. Now, you testified that Victor Pimentel actually went to
4 the Juárez airport to pick up Ms. de la Concha?

5 A. That's what he told me.

6 Q. Did you verify a crossing by both of them or...

7 A. I tried to, but there was no record of a crossing.

8 Q. No record of crossing.

9 So under what circumstances can people make it across
10 without a record?

11 A. Back then, in 2008, I believe it was not mandatory to -- by
12 Customs and Border Protection -- to scan every single person
13 that came into the country.

14 Q. Now, Victor had already worked -- you had already worked
15 with Victor, going back to the July 2008 incident up in
16 Chicago; is that correct?

17 A. Yes, I did.

18 Q. So he knew you?

19 A. Yes, he did.

20 Q. In fact, were you the one he called up about this alleged
21 threat?

22 A. Yes, I was.

23 Q. Did you ask him, Why didn't you tell me, Victor, that
24 Lilian de la Concha was here back here in October?

25 A. No, I didn't.

1 Q. This phone call that Lilian de la Concha made to Victor
2 sometime in December, did you verify whether or not a phone
3 call was being placed?

4 A. No, I didn't.

5 Q. You prepared a report regarding the events of July 2008; is
6 that correct?

7 A. Yes, I did.

8 Q. You testified in -- on direct that back then, in July 2008,
9 you talked to Atlanta.

10 A. Yes, I did.

11 Q. Actually, your words were you talked to them shortly after
12 you got the information from Victor that he was going up there.

13 A. Yes.

14 Q. Did you call up Atlanta while Victor was up there?

15 A. I don't recall. It was after I talked to him, but I don't
16 know if he was already out there.

17 Q. Or you don't -- is it possible you called them after the
18 fact?

19 A. No. It was after I made the phone call with Victor, and
20 after I talked to the agents in Chicago as well.

21 Q. Okay. That aspect of your investigation is not revealed in
22 your report?

23 A. No, it's not.

24 Q. Is there a reason why?

25 A. No.

1 Q. Now, Victor did let on -- and by that I mean he told you
2 that Lilian de la Concha was involved in coordinating the money
3 transfer to Mexico.

4 A. That's what he told me, yes.

5 Q. And the meeting that took place at the local SAC office in
6 December 2008 involved a number of agents talking to
7 Mr. Delgado on a telephone conference with agents from Atlanta;
8 is that correct?

9 A. That is correct.

10 Q. To the best of your knowledge, was that conference --
11 telephone conference recorded?

12 A. No, it wasn't.

13 Q. Were you there present?

14 A. Yes, I was.

15 Q. Did you make a report about that?

16 A. Yes, I did.

17 Q. Oh, you did?

18 A. I made a report about the conversations.

19 Q. About the December 2008 conference call?

20 A. Not the details. It was stated in the report that it was
21 made, but not the details. It was Atlanta who made the
22 specific details in the report.

23 Q. Okay. And who was in the lead in that conference call,
24 local SAC or Atlanta?

25 A. Both were.

1 Q. And it's your testimony that they asked questions of
2 Mr. Delgado regarding the events that had taken place up in
3 Chicago?

4 A. Yes, the subject was brought up.

5 MR. VELARDE: May I just have a minute, Your Honor?

6 THE COURT: You may.

7 BY MR. VELARDE:

8 Q. Let me ask you a question or two about the procedure that
9 was in place back in October 2008, when Lilian de la Concha
10 came across.

11 Assuming she's a Mexican national with just a tourist
12 visa, would that have been scanned at the bridge?

13 A. Possibly, yes.

14 Q. But did you attempt to verify whether or not?

15 A. Yes, I did.

16 Q. And you couldn't find any record?

17 A. No, I couldn't.

18 Q. As best as you know, was there a lookout for Lilian de la
19 Concha in October 2008 as a possible suspect in a money
20 laundering conspiracy?

21 A. There might have been.

22 Q. And if there had been one, she would have been stopped
23 there at primary; is that correct?

24 A. Correct.

25 Q. Of course that didn't happen?

1 A. No, it didn't.

2 MR. VELARDE: Thank you very much.

3 REDIRECT EXAMINATION

4 BY MS. KANOF:

5 Q. Agent Aguirre, you just testified that you didn't put the
6 substance of a conference call in your report?

7 A. Not the details. I put in that the conference call had
8 been -- it occurred. But it was actually Atlanta who put the
9 details of what the conference call was.

10 Q. Well, I understand that Alex Ascencio wrote a more detailed
11 one than you. But do you recall that you did put some of what
12 occurred in the call?

13 A. Yes. That's what we testified to, that he had denied
14 knowing that Victor was in Chicago, yes. But not the whole
15 details. I put in part of the substance of the call.

16 Q. Okay. But because it was Alex Ascencio's, basically,
17 relationship to the case, you let him write the report about
18 the conference call?

19 A. That's correct.

20 Q. Okay. And -- but you did put in your report that Delgado
21 told GS Ramsey he was not involved in any operation that
22 involved picking up money in Chicago?

23 A. That's correct.

24 Q. And it was after you hung up that he started admitting bits
25 and pieces, and then finally admitted he did it without ICE's

1 involvement?

2 A. That's correct.

3 Q. Agent Aguirre, you testified that when you first started
4 working for the federal government you were at the bridge,
5 right?

6 A. Yes.

7 Q. Okay. And what did you do at the bridge?

8 A. I was an inspector.

9 Q. What's an inspector?

10 A. It's -- basically, we admit people into the country on the
11 primary booth.

12 Q. Okay. So when you come to the bridge and you have to
13 declare your citizenship and all that kind of stuff, you did
14 that?

15 A. Correct.

16 Q. Okay. Right now, today, if a car comes through that
17 primary *garrita*, that little booth, is all kinds of information
18 taken about the vehicle?

19 A. That's correct.

20 Q. Are there cameras?

21 A. That's correct.

22 Q. Were there cameras in 2008?

23 A. That's correct.

24 Q. No. In 2008, were the cameras that are there now there?

25 A. There were cameras yes, sir.

1 Q. Okay. And did they take a picture of a license plate?

2 A. The -- in 2008, I believe the license was recorded. But I
3 don't recall if there was an actual picture, a photograph of
4 the license plate itself.

5 Q. Well, who recorded the plate?

6 A. Well, from what I understand, Victor told us that him and
7 Lilian de la Concha crossed through a pedestrian lane.

8 Q. Oh, okay. So if you cross through a pedestrian lane,
9 there's no evidence of a car or a license plate or anything
10 like that?

11 A. That's correct.

12 Q. Okay. And people show their ID. Do they just -- in 2008,
13 people show that they have the right kind of visa, green card,
14 or a vacation visa or something like that, they just waved them
15 through?

16 A. Yes. They -- it was necessary to show the documentation,
17 but not -- it was not always standard procedure to make sure
18 that 100 percent of the people that entered the United States
19 were scanned into the computer system. As long as they were in
20 possession of an entry document the majority of time they were
21 let through.

22 Q. Okay. So the fact that you didn't find any evidence, the
23 absence of a documentation doesn't mean it didn't happen?

24 A. Exactly.

25 Q. Today, that's different?

1 A. Yeah. It's different today.

2 Q. Today, the documents have lasers and you stick them in a
3 machine and everyone is documented, correct?

4 A. Exactly.

5 Q. Okay.

6 The question was asked to you -- just one other thing.

7 You were asked whether or not there was a lookout for
8 de la Concha, but you didn't get an opportunity to explain what
9 a lookout is.

10 What's a lookout?

11 A. It's a -- it's a record which gives information how to
12 proceed if a person is encountered at one of the primary booths
13 at a port of entry or at an airport, or somebody that's queried
14 for some reason or another.

15 Q. Okay. So there's a computer that is called the Treasury
16 Enforcement Computer System, correct?

17 A. Yes, there is.

18 Q. It used to be Customs, which is why it's called Treasury?

19 A. Uh-huh.

20 Q. Is that yes?

21 A. That's correct.

22 Q. And say you're an FBI agent and you're investigating a
23 case, and you think that maybe a witness or a subject or
24 somebody is going to cross the bridge.

25 Could you input that information so that it would pop

1 up if that person crossed the bridge?

2 A. No, not an FBI agent. He would have to have somebody who
3 works either with the Treasury Department, or now Customs and
4 Border Protection, or the Department of Homeland Security, put
5 that hit into that system -- that specific system.

6 Q. Okay. And what about in 2008, when you're crossing through
7 the pedestrian lane? If there -- if there's a hit in TECS, or
8 a lookout -- actually, it's called a lookout --

9 A. Uh-huh.

10 Q. A lookout in TECS, in the computer system --

11 MS. KANOF: T-E-C-S, Suky.

12 BY MS. KANOF:

13 Q. -- if there's a lookout in TECS, might the person get
14 through if they walked through the pedestrian lane in 2008?

15 A. If their identification is not scanned, if their
16 information is not put into the computer, then yes, they would
17 go ahead and be able to go through without knowledge of that
18 lookout.

19 Q. Okay. Did you put a lookout in TECS?

20 A. No, not on Lilian de la Concha.

21 Q. Okay. And back in 2007, do you know whether or not the --
22 the attempt at finding -- or dealing with the million dollars
23 was to find -- to basically crawl up the scale to get the big
24 guys?

25 A. I believe that's what the intent was.

1 Q. Okay.

2 MR. VELARDE: Your Honor, I'm going to object because
3 that calls for speculation, and he's speculating.

4 THE COURT: I'll sustain the objection.

5 BY MS. KANOF:

6 Q. And are you aware of whether or not anybody from the
7 El Paso SAC ICE office put a lookout in for Lilian de la
8 Concha?

9 A. No, it wasn't from the SAC El Paso.

10 MS. KANOF: Thank you.

11 RECROSS-EXAMINATION

12 BY MR. VELARDE:

13 Q. Mr. Aguirre, 2008 came after 9/11; is that correct?

14 A. Yes, sir.

15 Q. And after 9/11, those entry inspections became very rigid;
16 isn't that true?

17 A. Yes, they did.

18 Q. So if a person presents themselves at the bridge, are you
19 telling this jury that just presenting your card was going to
20 do it in 2008?

21 A. Yes, sir. Because I started working as a Customs inspector
22 in 2003 -- in 2002, I'm sorry.

23 Q. And so --

24 THE COURT: Well, let him finish. Did you finish?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay. Go ahead.

2 BY MR. VELARDE:

3 Q. And so your testimony is that this is -- this probably
4 accounts for her not being --

5 A. Well, it had to be a legitimate entry document. And the
6 inspector could actually hold the document and look at it and
7 verify if it belonged to the person, and if it was a legitimate
8 entry document and it was valid, and then they could let them
9 through.

10 It doesn't mean that they were not looking at the
11 document, it's just that it wasn't entered into the system.

12 Q. I'm going to ask you to make this assumption.

13 The woman is a Mexican national and she has legitimate
14 papers. She presents them.

15 Is it your testimony that they're not scanned, or back
16 then they weren't scanned?

17 A. It depended on the inspector. I'm not saying that
18 everybody -- nobody was scanned, but it was possible.

19 Q. Now when you interviewed Mr. Pimentel in December 2008, he
20 made known to you that the reason that he was coming up with
21 this information about this alleged threat was that he wanted
22 Delgado to be punished. He didn't want --

23 MS. KANOF: Objection, Your Honor, outside the scope
24 of redirect.

25 THE COURT: Mr. Velarde, where are you headed?

1 MR. VELARDE: Sir?

2 THE COURT: You're beyond the scope.

3 BY MR. VELARDE:

4 Q. The lookout that's normally placed on people can be done by
5 ICE agents; is that correct?

6 A. That's correct.

7 Q. The question was asked about FBI agents. We're not talking
8 about FBI. We're talking about ICE. And ICE is an agency of
9 H -- Homeland Security; is that correct?

10 A. That's correct.

11 Q. So back in 2007, when this information revealed the
12 identity and the names of all these people, are you saying that
13 that infor- -- you don't know whether or not that information
14 was inputted as a lookout?

15 A. I don't recall when that information was inputted.

16 Q. Who would know?

17 A. The owner of the record.

18 Q. Would the case agent be involved -- would the case agent
19 have information about that?

20 A. I --

21 Q. Whether or not --

22 A. I would assume he would.

23 Q. Okay. You wouldn't have known?

24 A. Once again, I -- I don't recall who -- who was the record
25 owner.

1 MR. VELARDE: Thank you very much.

2 MS. KANOF: Nothing further.

3 THE COURT: It's 5:01, Counsel. It's time to take a
4 break.

5 Ladies and gentlemen of the jury, remember all the
6 instructions that I gave you, and please abide by them.

7 We're going to get started just a little bit later
8 tomorrow, okay, because I do have some hearings at 8:30. So
9 we'll get started at 8- I'm sorry -- at 9:15 instead of 9:00.
10 I don't want to keep you there waiting too long; that's why.
11 You know, be prepared to come into court at 9:15.

12 And again, please remember all the instructions that I
13 gave you.

14 You-all hold on. I want to talk to you.

15 The jury is being excused at this time.

16 (Open court; outside the presence of the jury.)

17 THE COURT: Ms. Kanof, how many more witnesses do you
18 anticipate.

19 MS. KANOF: Two.

20 THE COURT: Two more?

21 MS. KANOF: Yes, sir.

22 THE COURT: Any idea how long your direct would be?

23 MS. KANOF: Maybe an hour and a half at the most. An
24 hour and a half, including cross.

25 THE COURT: Okay. So you would more than likely be

1 through by noon?

2 MS. KANOF: I hope so.

3 THE COURT: And be able to rest by noon?

4 MS. KANOF: Yes, Your Honor.

5 THE COURT: Okay. Do we have a draft, Jayna?

6 LAW CLERK: Yeah.

7 THE COURT: We have a draft of the Charge. Okay? I
8 want you to come in tomorrow with any requests or any objection
9 that you have. I'm going to resolve them. I'm going to
10 resolve them, hopefully, by the morning. Okay?

11 So with that, we'll be in recess until --

12 MR. ESPER: Your Honor, do you want us before you
13 start your hearings at 8:30?

14 THE COURT: You know what? Yes, I think so. If you
15 will get together with Jayna. Get all your requests in.

16 MR. ESPER: In other words, meet with her at 8:30?

17 THE COURT: 8:30, yes.

18 MR. ESPER: In not -- obviously not in the courtroom
19 because you'll be --

20 THE CLERK: Right outside.

21 THE COURT: Okay.

22 We'll be in recess, then, until 9:15 tomorrow morning.

23 (Proceedings continued in Volume 4.)
24
25

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